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## Speech and silence

### freedom of speech and processes of censorship in early imperial Rome

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**Title:**Speech and silence

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**Author:**Jane McCarthy

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# Speech and silence: freedom of speech and processes of censorship in early imperial Rome

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Submitted in fulfilment of the requirements  
for the degree of Doctor of Philosophy,  
Department of Classics,  
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31 January 2013

## Abstract

This thesis is concerned with freedom of speech in early imperial Rome. The creation of the principate meant that the emperor held absolute power based on military force, but there is no comprehensive survey of how this affected freedom of speech. This study therefore examines relevant primary sources, approaching the question through three areas – controls imposed by the emperor through law and *force majeure*, self-censorship and peer pressure among the elite, and popular political protest. Most of the evidence presented is literary, reflecting the interests and concerns of the elite authors and their intended audience, though where relevant reference is made to inscriptions, graffiti and *dipinti*.

The thesis considers the hierarchical, status-conscious nature of Roman society, arguing that concern for social standing affects all communication. Although there are incidents of control imposed by the emperor or his representatives, peer-to-peer pressure has a greater impact upon freedom of speech.

Communication is affected by the status of the speaker, the audience and the occasion. The distinctions between “public” and “private” speech differed significantly from modern conceptions. This means that protocols arose for dealing with potentially offensive subjects – insult, criticism and obscenity – so that offence was minimised and social relations could continue harmoniously.

This argument is developed by an exploration of political communication between senate and emperor, especially the importance of the differing relationships between the emperor and individual senators. The study concludes by exploring informal and popular protest at Rome, through gossip, demonstrations at *ludi* and *munera*, and through graffiti and pamphleteering. Even here, concerns for status and personal relationships with the emperor explain the forms protests take.

This study aims to extend existing work and re-examine assumptions commonly made about freedom of speech, or its lack, in early imperial Rome.

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## Introduction

Here one of the guinea-pigs cheered and was immediately suppressed by the officers of the court. (As that is rather a hard word, I will just explain to you how it was done. They had a large canvas bag, which tied up at the mouth with strings: into this they slipped the guinea-pig, head first and then sat upon it.)

‘I’m glad I’ve seen that done,’ thought Alice. ‘I’ve so often read in the newspapers, at the end of trials, “There was some attempt at applause, which was immediately suppressed by the officers of the court,” and I never understood what it meant till now.’<sup>1</sup>

Life is hard in Wonderland. Heads (and whiskers) are under threat and judicial rules are invented on an *ad hoc* basis. While the reader knows that officers of the court in the “real” world do not put protestors into canvas bags and sit on them, “sentence first, then verdict” is, sadly, not only found in fantasy. Freedom of speech is a perennial concern, and Lewis Carroll draws attention to universal human experiences. Any news bulletin contains reports of politicians placed under house arrest for criticising their government, or people prosecuted for stating their religious beliefs, or remarks condemned for giving general offence.<sup>2</sup>

That sense of relevance first sparked my interest in freedom of speech at Rome. Here was a topic that not only reflected concerns in the modern world, but affected scholarly readings of the ancient sources. Elite Roman interest – even obsession – with *libertas* during the early principate shows careful and constant thought about how they expressed themselves. Ovid, Seneca, Martial, Quintilian,

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<sup>1</sup> Carroll 1865: 158.

<sup>2</sup> This was written on 20<sup>th</sup> August 2012, when the lead stories on the BBC news included: on-going protests at the prison terms imposed on the Russian punk band Pussy Riot [www.bbc.co.uk/news/world-europe-19307077](http://www.bbc.co.uk/news/world-europe-19307077), Julian Assange addressing the media about his asylum claim to Ecuador <http://www.bbc.co.uk/news/uk-19319140>, an eleven year old girl arrested for blasphemy in Pakistan <http://www.bbc.co.uk/news/world-asia-19311098>.

Epictetus, Tacitus, Pliny, Suetonius, Juvenal, all explicitly and by implication address questions of freedom of speech and control. Other authors, especially Cassius Dio, provide additional evidence. The period in question is one of rapid political change and encompasses the rise of a system of autocratic rule – and for the purposes of this study, it is assumed that the emperor’s position was effectively a monarchy.<sup>3</sup> The voices that survive to tell us what it was like to live under the early principate record their experiences of a complex, hierarchical society where they must contend with vested, powerful interests. Their response to these pressures affected their literature, their history, their everyday communication. Unless we understand what constraints there were on how they expressed themselves – and how those constraints operated - we cannot engage fully with what they have to say about their world.

There are anomalies in the way modern scholars think about this problem. It is striking how often one finds the assumption that “dissident” or “offensive” works were suppressed and those representing an “official” view of events were privileged.<sup>4</sup> The implications are rarely explored. How, precisely, such a system of reward and harm could be imposed, or official representations enforced is left unexplained. That the Romans themselves had no word for “censorship” which matches the modern concept has caused astonishingly little concern. Rudich notes the discrepancy, but glosses it as “a phenomenon which, despite its demonstrable existence in a particular historical context, apparently lacked an accurate verbal designation”.<sup>5</sup> He interprets this as the Roman elite’s “failure to articulate a fact of life”. The willingness of modern scholars to articulate it for them is alarming.

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<sup>3</sup> For the purposes of this study, I follow the view of the emperor as, at least potentially, an absolute ruler put forward for example by Millar 1977, Brunt 1977.

<sup>4</sup> E.g. Syme 1960. Kenney 1982 is not alone in assuming that literature was produced to please the *princeps* and that this was resisted by “opposition circles”. Sailor 2008: 3 assumes censorship. Hoffer 1999: 162-4, 168-73 assumes censorship was lifted under Nerva and Trajan. Lendon 1997 assumes fear of censorship without discussing the topic directly.

<sup>5</sup> Rudich 2006. Quoted p. 7.

Paul Veyne describes history as “a journey into otherness”, but when we think we have a map, it is tempting to stop looking for the route.<sup>6</sup> For example, Tacitus describes the trial of Aulus Cremutius Cordus in AD 25. The charge was “novel and till then unheard of”, for “publishing a history which eulogized Brutus, and styled Cassius the last of the Romans”.<sup>7</sup> The author committed suicide and his book was burned. This looks like literary censorship, something recognisable from modern parallels such as Stalinist Russia or Nazi Germany. Other incidents appear to conform to present ideas of censorship, with authors executed or exiled, and their books burned or banned.<sup>8</sup> There are, however, discrepancies which do not fit the modern model. Dio thinks the charge against Cremutius Cordus was irrelevant, trumped up by desperate political enemies.<sup>9</sup> His history was reinstated by Gaius.<sup>10</sup> Under Domitian, it was circulating freely. That did not mean it had survived in full, as Quintilian finds a bowdlerised form perfectly acceptable.<sup>11</sup> Cremutius’ situation – and the attitudes the Roman sources reveal – do not parallel modern concepts of censorship. This is why an investigation into freedom of speech in early imperial Rome *as the Romans themselves understood it* is necessary: it provides context for the literature and history of the early principate.

Since the scope of the study needs definition, the “first Augustan settlement” of 27 BC, when Octavian became known as “Augustus”, provides as clear a starting point for the creation of the principate as any – certainly Dio presents it in those terms.<sup>12</sup> By the early second century, the position of the *princeps* had stabilised and become generally accepted, so this study ends in AD 117 with the death of

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<sup>6</sup> Veyne 1987: 2.

<sup>7</sup> Tac. *Ann.* 4.34-5. Cremutius Cordus postulator novo ac tunc primum audito crimine, quod editis annalibus laudatoque M. Bruto C. Cassium Romanorum ultimum dixisset.

<sup>8</sup> The Appendix to chapter 1 provides a complete list of examples of book burning and penalties against authors for the period of this study. For self-conscious authors, see for example Tac. *Dial.* 2-3 where Maternus is encouraged to tone down his play *Cato*, and refuses.

<sup>9</sup> Cass. Dio 57.24.2-4.

<sup>10</sup> Suet. *Calig.* 16.1.

<sup>11</sup> Quint. *Inst.* 10.1.104.

<sup>12</sup> Cass. Dio, 53.16-19.

Trajan. Some additional evidence has been included from the Republican period, but only when it adds to the understanding of freedom of speech during the main timeframe.

Elaine Fantham helpfully defines modern “censorship” as the examination of a work of art or of literature to “suppress what is regarded as unsuitable on political, religious or moral grounds”.<sup>13</sup> She suggests that modern censorship is aimed at suppressing a communication, while in the ancient world the person communicating would be suppressed. Secondly, modern censorship often works to avoid unsuitable material being circulated whereas ancient censorship was reactive once a work was produced. She then goes on to discuss the office of the censor at Rome, showing that censors acted as tax assessors and played an important role in defending and defining morals in the Republican period, before they were “replaced by the unchallenged supervision of the principate”. The office of censor, held by the *princeps*, could be exploited for imposing a moral agenda.<sup>14</sup> However, there is no question that this automatically related to overseeing “censorship” of literary texts. Rudich dismisses censorship under the Julio-Claudians on the grounds of “total arbitrariness”. This is because there was no *Index* of banned books, and a work approved by one emperor might be prosecuted under his successor. However, this frames censorship in modern terms.<sup>15</sup> Moses Finley, in a wide-ranging article, describes the technological and social circumstances of literary production in the ancient world.<sup>16</sup> This leads him to dismiss censorship as an irrelevancy: “Merely an occasional off stage diversion.” Within his own narrow definition, he may be correct but restricting “censorship” to “literature” is unhelpful for understanding freedom and control of speech in the context of early imperial Rome.

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<sup>13</sup> Fantham 1977: 41.

<sup>14</sup> M. Johnson 1997; Jones 1973.

<sup>15</sup> Rudich 1997: 13.

<sup>16</sup> Finley 1977.

One way of resolving this conceptual problem is to move the parameters away from “censorship” and engage with broader aspects of freedom of speech. Article 19 of the Universal Declaration of Human Rights states:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

In this formulation, freedom of speech is presented in terms of someone’s right to form their own opinion, share it with others, and to hear other people’s ideas. Those who are not in a position of power need protection to allow them to do this.

The dangers of free speech were an active concern in the ancient world, and Ahl discusses the evidence for how to address an absolute ruler safely.<sup>17</sup> He uses material from both literature and textbooks of rhetoric to challenge the view that the Roman elite were terrified into silence. Instead, he demonstrates that their rhetorical training allowed them to employ “figured speech” or emphasis. This maintained the speaker’s safety by ensuring that remarks could be taken as positive, even flattering, by the main addressee, while leaving room for an alternative interpretation if someone so chose. Omission could be as important as what was actually said, because it left the audience room to draw their own conclusions. Ahl uses modern parallels to demonstrate that taking offence at figured speech damaged the person concerned, rather than the speaker. So, for example, showing anger at a reference to an historical tyrant revealed an emperor’s autocracy because it acknowledged the comparison was possible. Ahl’s insistence that speeches in the ancient world were intended to be understood on more than one level is helpful, as is his consideration of freedom of speech in the terms used in the ancient world. He argues that managing speech

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<sup>17</sup> Ahl 1984.

was normal and desirable. The Roman elite did not consider it weak or shameful to use such rhetorical techniques to avoid giving offence, so creating another disjunction between ancient and modern attitudes.

Scott's influential study is concerned with how speech alters with social setting. He argues that "inferiors" adapt their speech in the presence of "superiors" and vice versa.<sup>18</sup> He makes the sensible point that it is normal to deal politely and cautiously with those who have the ability to hurt us, or our families or friends, either physically or by withholding desired benefits. Scott's view is that people have a deep seated psychological need to tell the truth to their equals, however risky that may prove. He argues strongly that this is a universal human experience, and not something which is culturally determined. Suppressing what someone wants to say, dissimulating their true feelings, is hurtful to their conception of themselves, to what Scott calls their "dignity". Scott develops the idea of theatricality and performance where there is a difference in the relative power of the speakers, with the dominant dictating the lines. This leads him to argue for a "public transcript" – the "open interaction between subordinates and those who dominate" where it is "in the interests of both parties to tacitly conspire in misrepresentation".<sup>19</sup> In other words, both parties know that there is a gap between the reality of a situation, and the way it is spoken about, but collude to prevent that becoming obvious. This is contrasted with the "hidden transcript" which is a kind of code subordinates use to reveal what is "really meant" without bringing down retribution upon themselves. Scott argues that because subordinates behave in particular ways – over humbly, evasively, saying what they think those in power want to hear – it is normal for superiors to dismiss them as childish or unreliable. Scott provides examples from modern cultures and history, with a particular focus on black slavery in America. His study is closely argued and ground breaking, providing a sense of the questions we need to ask about speech between those with and without power. It also makes clear it

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<sup>18</sup> Scott 1990.

<sup>19</sup> Scott 1990: 2.

will be necessary to consider carefully whether “universal” examples really do transfer comfortably to the Roman world. Antebellum slavery in the American South may not exactly transpose to the experiences of slaves in Rome, especially imperial slaves and freedmen.

Vassily Rudich and Shadi Bartsch, though they do not mention one another, share some common ground in their work.<sup>20</sup> Rudich draws upon his own experiences of censorship in Russia, where an early article was suppressed for implying criticism of the Soviet system.<sup>21</sup> This makes him unsentimental about the effects of absolute power and influences his belief that the rise of autocratic rule profoundly affected modes of expression. *Dissimulatio* was an essential survival strategy for those who opposed the emperor Nero, but it came at a high psychological cost. Rudich’s theory is that literature under the principate, indeed elite communication generally, was carried out through a kind of code, which the rhetorically educated understood. Such language was interpreted according to someone’s own political sympathies and different people would understand the same thing in different ways. As a result, meaning became unstable and fragile. An innocent speech could be maliciously interpreted against the author’s intention, leading to disgrace and possible prosecution. This creates a world of ever more complex subtexts, depending on audience response rather than the author’s intention. This leads to the “rhetoricised mentality” where form is more important than content and manner is privileged over matter. Rudich argues for an increasing disjunction between *acta* and *verba* during the early principate, with corresponding psychological stress placed upon the Roman elite. The imaginative reconstruction of a world different from our own is admirable, but Rudich’s reliance upon historical psychology creates problems of method. For example, he suggests that Seneca absented himself from a senatorial debate in order to avoid giving an opinion. “It may easily be imagined that he simply failed

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<sup>20</sup> Rudich 1993, 1997; Bartsch 1994.

<sup>21</sup> Rudich 1993: xi-xiv.

to attend the meeting, giving as his excuse his poor health.”<sup>22</sup> We can imagine all we like, but in order to draw meaningful conclusions, speculation needs to be confined to the known facts.

Bartsch follows Scott in her view of the theatrical nature of elite Roman communication, adapting his theories of scripted discourse and the resulting tension between appearance and reality. An elite Roman needed to realise which “script” the emperor wanted him to follow and respond appropriately. Misjudgement could lead to disgrace or death. She believes that the result of this artificial situation was the development of “doublespeak”, where authors could deliberately subvert the “real meaning” of their work, disguising criticism so as not to draw imperial ire.<sup>23</sup> The audience have corresponding responsibility for uncovering a “hidden message” in a text. This had the effect of devaluing apparently positive terms, which could be understood to imply their opposite. As a result, it was difficult to praise someone and sound sincere. Both Bartsch and Rudich share an interest in the practical problems of dealing with a powerful superior, though Bartsch’s theatrical model distinguishes her study from Rudich’s more politicised approach.<sup>24</sup> The idea that interpretation and audience response mattered more than authorial intention, creating a climate of irrationality and fear, has been highly influential.

It is, however, not without its problems. There is a risk that attempting to decode what Roman authors “really meant” becomes ever more abstruse and inward looking, without advancing the discussion.<sup>25</sup> Perhaps in reaction, recent work has

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<sup>22</sup> Rudich 1993: 54. The debate was about the execution of the slaves of the murdered prefect Pedanius Secundus, described by Tac. *Ann.* 14.42-5. Rudich believes Seneca’s psychological turmoil arises from failure to consistently oppose slavery. For a critique of Rudich’s use of the term dissident see Campbell 1994.

<sup>23</sup> Bartsch 1994.

<sup>24</sup> Meckler 1995.

<sup>25</sup> E.g. McHugh 2004 argues that in Tac. *Ann.* 4. 34-5 Cremutius Cordus’ defence speech is an exercise in “figured language”, to demonstrate that Cremutius expressed his sentiments too overtly and paid a deserved price. This is ingenious, and may be correct, but if so, Tacitus’ subtlety has escaped detection for two thousand years.



begun to give authors greater credit for directing responses to their work. Anderson argues that Martial guides the reader's emotions so that they will not become angry: "Martial thrusts the accountability for the accusation of offence or injury ... back upon the accuser."<sup>26</sup> Innes acknowledges the importance of Bartsch's work, but questions her conclusions. Bartsch argued that Pliny's *Panegyricus* engaged with problems of sincerity because terms of praise had come to imply their opposite. She believes that he did this by saying that public and hidden transcripts were indistinguishable under Trajan – in other words by claiming that people could now say what they liked, wherever they pleased, regardless of who was listening. Innes doubts that Pliny could ever have intended to achieve so much with one speech, or on such an occasion. She believes that his insistence on truthfulness is a rhetorical device, intended to bring a new *color* to the tired themes of imperial panegyric.<sup>27</sup> In the same volume, Gibson moves away from Bartsch's and Scott's approach which sees discrepancy between public and hidden transcripts as consistent and universal. Gibson argues that the problem is political and particular, not literary and general: Pliny is struggling to make a distinction between Domitian's reign and Trajan's which does not exist in reality.<sup>28</sup> Freedom of speech is explored in Rutledge's introductory chapter to a volume on politics and literature in imperial Rome.<sup>29</sup> He suggests, surely correctly, that both political and social factors need to be considered and that there is a "nexus of complex dynamics at play in Roman society". He engages with questions of concern to any study of freedom of speech in early imperial Rome – the nature of *libertas*, problems of definition, political and social limitations, derision and abuse. He provides an overview of much of the relevant source material, and raises questions about Roman attitudes. This is, inevitably, limited by the constraints of space, and the present thesis has the luxury of scope to expand these themes. It draws rather different conclusions about the impact of

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<sup>26</sup> Anderson 2011, quoted p. 213.

<sup>27</sup> Innes 2011: 78-9.

<sup>28</sup> Gibson 2011: 116-20. Problems with praise will be discussed in chapter 4.

<sup>29</sup> Rutledge 2009.

status on freedom of speech, the role of individual *principes* and legal response to libel and slander.

Rutledge's chapter introduces a series of studies into individual authors. These, like other modern studies, describe situations where one party addresses someone in a position of greater power than themselves. It has become clear that this cannot safely be referred to as "censorship" and this thesis will describe restrictions on speech in terms of "suppression" and "control". Suppression is the attempt to prevent speech, or the circulation of a text, entirely. Control is more nuanced and refers to the attempt to limit or shape what is said. The top-down type of control that we have considered so far, where inferiors temper their remarks to those in power is not the only factor to consider. Despite the focus of the studies discussed above, speakers – or authors – are not only concerned with addressing their superiors. A member of the Roman elite was also concerned with how his peers responded. This is an area where cultural norms play a far greater part in deciding what is acceptable, made more complicated because the rules do not remain static. Paul Chambers provided a modern comparison for this fluidity, when he made a joke on Twitter about blowing up Robin Hood Airport.

<sup>30</sup> The Crown Prosecution Service charged him with making a malicious electronic communication. Their failure to accept his tweet as humorous reminds us that conventions of acceptable speech arise from social consensus, depend upon the cultural context, and are constantly being renegotiated. This type of control will be referred to as "censure", because it arises from fear of social disapproval. The status-conscious, competitive world of the Roman elite gives censure particular impact. Individuals were sensitive about their reputation, and did not tolerate perceived insult, while the distinctive role of patronage affected contemporary attitudes towards freedom of speech. This suggests that the preconception that issues of control in the early principate are solely political

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<sup>30</sup> <http://www.bbc.co.uk/news/uk-england-19009344>. He was acquitted. There are other similar examples because Twitter and Facebook are such new media for communication, so that norms of acceptability are still being established. This point will be explored further in chapter 3.

needs to be reassessed. Censure among the elite requires far more consideration than it has been given.

The third category of control is self-censorship. That occurs where someone does not say – or write – something through fear of negative consequences. This naturally leaves few traces, but it will be discussed where the evidence permits. It can arise either from fear of a powerful superior, or of reluctance to offend one's peers.

Studying freedom of speech provides its own challenges, because successful suppression means that there is no evidence to find. For example, Ovid never tells us why he was exiled, confining himself to dark hints about *carmen et error*.<sup>31</sup> The younger Julia's exile in AD 8 may or may not be connected and Fantham notes that Augustus "was successful not only in ensuring that Julia, like her mother, died in exile, but also in obliterating any memory of her except her disgrace".<sup>32</sup> Where evidence remains opaque, this needs to be acknowledged and conclusions made with appropriate humility. A past society has to be approached through the concerns and intentions of those living at the time, in this case a pre-industrial, hierarchical, slave-owning culture. People in the ancient world must be seen as individuals who lived their lives on their own terms. If the ancient sources do not support our preconceptions, or if they privilege social attitudes we would find unpleasant, even abhorrent, that is not the source's problem. It is the historian's job to hear and – as far as possible – reflect those voices from the past.

The primary sources are bolstered by archaeological evidence, graffiti, *dipinti*, and inscriptions, reflecting the experiences of the plebs, slaves and freedmen as well as the elite. Secondary material covers law, anthropology, socio-linguistics, archaeology, sociology, and cultural psychology. As a result of so much material,

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<sup>31</sup> Ov. Tr. 2.207.

<sup>32</sup> Fantham 2006: 116.

the discussion risked becoming superficial and ill-defined. I therefore decided to focus on what the Romans themselves had to say about freedom of speech. That means that most of the evidence discussed comes from the contemporary written sources. Some obvious caveats will spring to mind, since it is necessary to give due weight to genre and context, even where possible to the author's intention. This is the world of the elite Roman male, or his educators, and the sources must be used on that understanding. Other evidence is included where it deepens understanding of issues that the elite sources found frightening, perplexing, embarrassing – or which they did not address at all. This is an ancient historian's enquiry into freedom of speech in early imperial Rome, buttressed by other disciplines when that adds relevant information.

Freedom of speech encompasses legal, political, and social aspects. This thesis is therefore arranged thematically, rather than through a linear argument. Related ideas are developed through five chapters, which provide the material for drawing conclusions about the extent of freedom of speech in early imperial Rome, the factors that affected it, and the impact that those had. The first chapter surveys the legal evidence for control of speech at Rome. It discusses aspects of freedom of speech controlled by law and the judicial processes available to suppress speech. It considers how far such laws were enforced and the penalties for transgression. This chapter introduces the concept that relationships between individuals and the workings of patronage are essential to understanding freedom of speech in the early empire. This is not a world of hard and fast rules, but one where decisions are mediated in accordance with the perceived needs of the senior parties involved. This key theme will be developed through the thesis.

The second and third chapters provide a complementary exploration of censure. Together they address social controls that impacted upon freedom of speech. The argument is mainly confined to elite society because of the available evidence. The importance of reputation for maintaining social standing is developed as a second key theme. Since insults, jokes and obscenities occurred in some social settings and some types of literature, contexts where this material was acceptable

will be examined. It will be suggested that issues of status caused the elite considerable anxiety even on occasions when freedom of speech was apparently licensed, for example at *convivia* and the Saturnalia. The third chapter takes the inverse of the same question, examining attempts to control insult when it was not licensed, and outlining strategies the elite used to avoid giving and taking offence. This chapter will also explore Roman concepts of public and private, using this to explain why some aspects of freedom of speech were understood rather differently from the modern, western world.

The fourth chapter turns to political freedom of speech. This examines the relationship between the emperor, individual senators, and the senate as a body. It will explore how this developed during the period under question, considering the emperor's position within the senatorial elite and its effect upon freedom of speech. It builds on themes that have emerged from the earlier discussion of legal process, etiquette and status to explore how senators expressed praise and blame and the impact this had on their *libertas*. It will argue that by the early second century, the senate and the emperor had reached an accommodation. Provided that the emperor spoke and acted tactfully, senators were content to maintain the appearance of free speech.

The fifth and final chapter moves the scope of the enquiry to popular protest. It looks at how freely the non-elite, especially the urban plebs, could speak and considers popular demonstrations at theatres, amphitheatres and circus. The effect of gossip and rumour on political protest, and that of graffiti and *dipinti* will be considered. It will be argued that the impact of popular demonstrations should not be overstated and nor should elite sensitivity to popular humour. Once again, themes of status, patronage, and individual response can be shown to impact strongly upon freedom of speech.

Some promising lines of enquiry have had to be omitted, because of the constraints of time and the permitted length of the thesis. Freedom of speech among the military is only included when it affects political events at Rome. This

is in accordance with the decision to focus on elite literary evidence. The military form a distinct social group, and any useful discussion would need to include epigraphic and archaeological evidence from across the empire. Religious freedom of speech has been investigated only very cautiously, because of its complexity in terms of the ancient world. In order to be meaningful, discussion would need to incorporate magic, superstition, and astrology as well as state and imperial cult. Epigraphical, archaeological and anthropological evidence would all need to be addressed.

*Damnatio memoriae* – the obliteration of an offender’s name from public record, sometimes with other penalties – may seem a surprising omission. However, this was used as a form of social sanction, rather than as a genuine attempt to remove all traces of a person’s existence. Flower argues that its intention was to punish an individual, while taking care to preserve his family’s status and wealth.<sup>33</sup> The point seems to be, in fact, that *damnatio memoriae* denied an individual the acknowledgement of his contribution to the elite community. That penalty was meant to be remembered, and act as a deterrent to other potential transgressors. This has therefore been touched on only lightly. The decision was made to include evidence pertaining to the military, religion and *damnatio memoriae* only when they illuminate the main area of discussion. This allows the legal, political and social factors affecting freedom of speech to be explored more fully, without diluting or confusing the argument. So, now that the scope and aim of the thesis has been set out, let us follow Lewis Carroll’s excellent advice, and begin at the beginning, by considering the options available to a Roman seeking legal redress against someone who had offended him.

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<sup>33</sup> Flower 1998; 2006.

# 1: The legal basis for action against slander and libel

## 1.1. Introduction

Reconstructing the legal processes by which a Roman of the first century AD – whether emperor, senator or ordinary citizen – could seek redress against someone who defamed him is not an easy task. There are two related problems. Firstly, there is the lack of contemporary legal evidence. Since the nearest, Gaius' *Institutes*, dates from the second century, the legal sources may not accurately reflect the practice of the earlier imperial period.<sup>34</sup> The second difficulty concerns the historical sources, some of which are more nearly contemporary. Suetonius, Tacitus, Pliny and Cassius Dio all describe prosecutions for defamation.<sup>35</sup> The problem is that they avoid technical language and their accounts do not give enough information to allow legal processes to be reconstructed with confidence. Since Tacitus and Pliny were both senators and must have been present at trials under Domitian, we can assume this was not disinterest in legal niceties but a literary choice. This question will need further consideration, but for now the issue remains that their evidence does not offer a judicially accurate account of prosecutions for defamation.

Scholars have tackled this challenge undaunted but as yet there is no consensus.<sup>36</sup> The scant and ambiguous nature of the evidence creates a temptation to reconstruct legal processes through assumptions about individual cases. That risks creating a situation where conjectures build on one another so that the

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<sup>34</sup> See Harries 2007: 2–4 on the complex nature of evidence for Roman law, and danger that later sources create a misleading impression of seamless development, similarly Robinson 1997: 102–4. Johnston 1999: 12–29 is more sanguine, suggesting much of value is preserved within the legal sources, providing that other relevant evidence is used to set them within their historical context.

<sup>35</sup> For the historical references to cases of defamation cited in the text, see the Appendix.

<sup>36</sup> E.g. Bauman 1967 and 1974 attempts to recreate legal processes for individual trials while Rudich 2006: 8–17 dismisses legal process as irrelevant under an autocracy.

evidence becomes increasingly obscured and complicated. The challenge therefore is to clarify the legal processes and to consider how far the laws were applied in practice. This chapter will attempt to meet that challenge by a straightforward survey of the available evidence, both legal and historical, and by considering what may safely be concluded and what it is not possible to elucidate further.

The sources do not distinguish between written insults (libel) and spoken insults (slander). In some cases, such as that of A. Cremutius Cordus in 25, written texts were used to provide definitive proof of defamation. Insulting remarks, made before witnesses, also led to prosecution, for example that of Votienus Montanus in 24. Accusations might also be brought when verses were recited but no text apparently circulated, such as the case of Antistius Sossianus in 62. This reflects a society which does not necessarily privilege the written word over the spoken.<sup>37</sup> Nor did the ancient concept of a “published” work parallel a modern one, since recitation functioned as a form of publication and written copies circulated easily and informally.<sup>38</sup> This study will therefore refer to all cases of verbal injury, whether libel or slander, as “defamation”.

Any discussion of defamation in the first century AD must include the development of the law of *maiestas*. The charge of “diminishing the *maiestas* (greatness or majesty) of the Roman people” causes a particular difficulty because there is no clear definition within the ancient sources.<sup>39</sup> Since a corresponding English term is lacking, *maiestas* will either be left untranslated or rendered as “treason” in order to accentuate the seriousness of the charge and its

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<sup>37</sup> E.g. Plin., *Ep.* 3.5.7-16 describes his uncle’s daily routine, in which listening to works read aloud was as important as reading. Parker 2009 argues sensibly against modern tendencies to over-privilege oral culture, maintaining that books – read aloud and privately – were central to elite literary society.

<sup>38</sup> For example Plin. *Ep.* 3.10.4 asks Vestricius Spurinna and Cotta not to circulate the biography of their son ahead of formal publication. Quint. *Inst.* 1 Praef. 7 wants to publish an “official” version to replace “pirate” copies of his works. For a discussion of the Roman concept of “publication” see Kenney 1982 15-22. For Roman literacy see for example Harris 1989. Horsfall 1991: 62-5 suggests Harris over privileges the need for formal education.

<sup>39</sup> For discussion of the meaning of *maiestas* see e.g. Mackie 1992: 88-92; Bauman 1967: 1-15.



political implications.<sup>40</sup> The nature and definition of *maiestas* will be fully discussed in section 6.

## 1.2 Gaius' *Institutes*

Gaius' *Institutes* dates from the mid second century AD and is a text book introduction to Roman law. Gaius sets out the principles of what constitutes *iniuria*:

iniuria autem committitur non solum cum quis pugno puta aut fuste percussus vel etiam verberatus erit, sed etiam si convicium factum fuerit, sive quis bona alicuius quasi debitoris sciens eum nihil sibi debere proscipserit, sive quis ad infamiam alicuius libellum aut carmen scripserit, sive quis matrem familias aut praetextatum adsectatus fuerit, et denique aliis pluribus modis.

Outrage (*iniuria*) is committed not only by striking a man with the fist or a stick or by flogging him, but also by raising a clamour against him, or if, knowing that he owes one nothing, one advertises his property for sale as a debtor's, or by writing defamatory matters in prose or verse against him, or by following about a matron or a youth and in short in many other ways.<sup>41</sup>

Gaius conceives *iniuria* as anything which either harms someone in a way that was considered personally degrading, or which damages their reputation and so lowers their status in the community. Harries points out that the Roman idea of disgrace was both a moral and legal one, so that professions such as brothel-keeping, performing for pay or training gladiators incurred *infamia* and limited one's legal rights.<sup>42</sup>

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<sup>40</sup> When considering the seriousness of treason charges, it may be worth noting that in the United Kingdom the death penalty was only abolished for treason in 1998 (Crime and Disorder Act).

<sup>41</sup> Gai. *Inst.* 3.220.

<sup>42</sup> Harries 2007: 6.

Gaius' evidence is that *iniuria* is an offence against the plaintiff's dignity and how that is inflicted is less important than the resulting affront the victim feels. The open-ended nature of the offence means that no list of possible insults can be definitive.

Since any action which lessens the defendant's status causes *iniuria*, no distinction is made between physical and verbal injury. Defamation therefore includes spoken insults and those made in writing, regardless of whether prose or verse is used.

Gaius next considers whether it is possible to suffer *iniuria* on behalf of someone else:

pati autem iniuriam uidemur non solum per nosmet ipsos, sed etiam per liberos nostros, quos in potestate habemus, item per uxores nostras, quamuis in manu nostra non sint; itaque si ueluti filiae meae, quae Titio nupta est, iniuriam feceris, non solum filiae nomine tecum agi iniuriarum potest, uerum etiam meo quoque et Titii nomine.

A man is deemed to suffer outrage not only in his own person but also in the persons of his children *in potestate* and his wife.

Accordingly if you commit an outrage on my daughter (*in potestate*) who is married to Titius, an *actio iniuriarum* lies against you not only in her name but also in mine and Titius'.<sup>43</sup>

A slave cannot suffer *iniuria* unless the outrage is so shocking it is intended to be an insult against the owner. This happened frequently enough that the praetor had issued a *formula* for the eventuality in his edict.<sup>44</sup>

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<sup>43</sup> Gai. *Inst.* 3.221.

<sup>44</sup> Gai. *Inst.* 3.222.

The praetor issued a *formula* when the plaintiff first approached with the case and appointed a *iudex* to hear the case and decide on the penalty.<sup>45</sup> However, some cases were worse than others and Gaius explains the principles of aggravated outrage:

atrox autem iniuria aestimatur uel ex facto, uelut si quis ab aliquo uulneratus aut uerberatus fustibusue caesus fuerit; uel ex loco, uelut si cui in theatro aut in foro iniuria facta sit; uel ex persona, uelut si magistratus iniuriam passus fuerit, uel senatori ab humili persona facta sit iniuria.

An outrage is regarded as aggravated (*atrox*) either by the actual deed, for an example wounding or flogging or cudgelling a man, or by the place, for example if an outrage is inflicted in the theatre or the forum, or by the person, for example if an outrage is inflicted on a magistrate, or on a senator by a person of low degree.<sup>46</sup>

Gaius' evidence therefore sets out the principles that defamation is a form of *iniuria*, which can be suffered on behalf of someone else, and that some cases of defamation are more serious than others.

### 1.3 Ulpian

The *Digest* of Justinian is a compendium, completed in AD 533 as part of a body of definitive civil law. It selected and summarised earlier rulings and has particular value because it names its original sources. These include the third-century jurist Ulpian, whose discussions of legal problems are especially thorough. Most helpfully, when Ulpian considers *iniuria*, he quotes the Augustan

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<sup>45</sup> Gai. *Inst.* 3.224. For discussion of how the formulary system worked in practice, see e.g. Johnston 1999: 112-3.

<sup>46</sup> Gai. *Inst.* 3.225.

M. Antistius Labeo, so that we can be reasonably confident that this reflects the legal position in the first century. His definition states:

specialitur autem iniuria dicitur contumelia ... iniuriam autem fieri Labeo ait aut re aut verbis: re, quotiens manus inferuntur, verbis autem, quotiens non manus inferuntur, convicium fit.

But, specifically, “outrage” (*iniuria*) is defined as insult (*contumelia*). ... Labeo says that outrage is inflicted either by act or by words: by act, when a physical attack is made; by words, whenever no physical attack is made, it is abuse (*convicium*).<sup>47</sup>

Ulpian concludes from Labeo’s definition:

omnemque iniuriam aut in corpus inferri aut ad dignitatem aut ad infamiam pertinere.

Every outrage is either inflicted on the person or is concerned with someone’s dignity (*ad dignitatem*) or disgrace (*ad infamiam*).<sup>48</sup>

That there were problems in defining the offences that caused *iniuria* is suggested when Ulpian quotes Labeo’s comments on the praetor’s edict. This says:

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<sup>47</sup> *Dig.* 47.10.1.pr.-1. The OLD definition of *convicium* includes “insulting talk, abuse, mockery” so Labeo is most specific about *verbal* assault as a form of *iniuria* here.

<sup>48</sup> *Dig.* 47.10.1.2.

quod autem praetor ait “quid iniuriae factum sit, certum dicat,” quemadmodum accipiendum sit? certum eum dicere Labeo ait, qui dicat nomen iniuriae, neque sub alternatione, puta illud aut illud, sed illam iniuriam se passum.

When the praetor says, “Let him specify what was done to cause outrage,” how should that be understood? Labeo says that a person specifies when he gives the name of the outrage, without any alternatives such as this or that, but the actual outrage he has suffered.<sup>49</sup>

This suggests that the open-ended nature of *iniuria* and lack of precise definition has created potential for abuse by people bringing vague charges. The praetor has acted to stem this by insisting that any allegations must specify the offence that gave rise to the claim.

Labeo is credited by Ulpian with defining *atrox iniuria* in much the terms Gaius uses:

atrocem autem iniuriam aut persona aut tempore aut re ipsa fieri Labeo ait. persona atrocior iniuria fit, ut cum magistratui, cum parenti patrono fiat. tempore, si ludis et in conspectu: nam praetoris in conspectu an in solitudine iniuria facta sit, multum interesse ait, quia atrocior est, quae in conspectu fiat. re atrocem iniuriam haberi Labeo ait, ut puta si vulnus illatum vel os alicui percutsum.

Labeo says an outrage is aggravated by virtue of the person, or the time or its very nature. Outrage is aggravated by virtue of the person, when inflicted on a magistrate, one’s parent or patron. It is aggravated by time if it is inflicted at the games or in full view;

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<sup>49</sup> *Dig.* 47.10.7.4.

for Labeo says that it is of great importance whether the outrage be perpetrated in view of the people or in private, the former being aggravated. He also says it matters greatly whether the insult is committed in view of the praetor or in private, because it is much more serious if done in full sight. He says it is aggravated by its very nature if a wound be inflicted or someone receive a blow in the face.<sup>50</sup>

Since Ulpian's conclusions about *iniuria* draw on Labeo's opinion and are so closely related to Gaius', we can have confidence that *atrox iniuria* was defined in these terms during the first century.<sup>51</sup> However, rather than specifying the aggravated nature of insults committed in the theatre and forum as Gaius does, Labeo gives a more wide-ranging definition. An insult committed in public sight (*in conspectu*) is more serious than if it happens without witnesses (*in solitudine*). If there is public knowledge of the outrage, then the plaintiff's reputation is affected more adversely, and so an insult that is witnessed becomes *atrox*.

Also familiar from Gaius, but explicitly set out is concern for the relative social standing of both victim and perpetrator of the outrage. The *Digest* discusses part of the praetor's edict:

generaliter vetuit praetor quid ad infamiam alicuius fieri. ... quod ait praetor: "si quis adversus ea fecerit, prout quaqua re erit, animadvertam," sic intellegendum est, ut plenior esset praetoris animadversio, id est ut quodcumque eum moverit vel in persona eius qui agit iniuriarum actionem vel eius adversus quem agitur vel etiam in re ipsa, in qualitate iniuriae, non audiat eum qui agit.

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<sup>50</sup> *Dig.* 47.10.7.8.

<sup>51</sup> *Dig.* 47.10.1.3-9. Ulpian expands Gaius' account of *iniuria* suffered on behalf of someone else by including explicit offence given to a *paterfamilias*. There is no evidence that this applied to cases in the earlier period and given Gaius' silence, it is probably best to assume it did not.

The praetor bans generally anything which would be to another's disrepute (*a list of banned actions follows, including someone who writes a lampoon or issues or sings something which dishonours another person*) ... When the praetor says that "If someone act to the contrary (of the list of banned actions) I will deal with it according to the nature of the issue," this should be understood to mean that the praetor can consider carefully so that if there is anything in the character of the plaintiff or of the defendant or in the nature of what was done or in the particulars of the outrage that troubles him, he will not hear the plaintiff.<sup>52</sup>

This makes explicit that the facts of the case and the characters of both parties will be taken into account. This part of the edict cannot be securely dated, since each edict was technically only valid for the praetorship for which it was given and the *Digest* provides no clue as to date. This could make the evidence problematic but in practice the next praetor usually adopted his predecessor's edict and there was considerable continuity. After c. AD 129 it was consolidated and fixed as the *edictum perpetuum*. The edict shows which areas of legal practice were of ongoing concern since the praetor was not necessarily a legal expert, and consulted jurists for advice.<sup>53</sup> Since Labeo had discussed status with regard to *atrox iniuria* these principles probably were applied from the Augustan period and provide further evidence of contemporary concern with relative social status and its effect on prosecutions for *iniuria*.

The evidence so far considered from Gaius and Ulpian refers to cases of *iniuria* brought before the praetor. These were civil cases, in which the object of the court proceedings was to seek redress for the insult. There is no surviving evidence to show how reputation and social standing affected cases brought before the praetor in actual practice. This is probably due to the fact that the

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<sup>52</sup> *Dig.* 47.10.15.27-28.

<sup>53</sup> Johnston 1999: 3-4.

praetor dealt with cases brought by and against those of lower social status than senators and prominent *equites* during the imperial period.<sup>54</sup> The defamation trials that interest the historical sources are high profile cases, which have political implications and deal with the elite. These cases were usually heard in the senate and owed their processes to criminal rather than civil law.

#### 1.4 *Lex Cornelia de iniuriis*

There was certainly a criminal law that dealt with *iniuria* since Sulla's *lex Cornelia de iniuriis* of 82 BC offered redress for victims of assault.<sup>55</sup> Ulpian's account of the legislation begins with provisions against physical attack:

lex Cornelia de iniuriis competit ei, qui iniuriarum agere volet ob eam rem, quod se pulsatum verberatumve domumve suam vi introitam esse dicat.

The *lex Cornelia de iniuriis* applies to someone who wishes to bring action for insult on the ground that he declares himself to have been beaten or thrashed or his house to have been entered by force.<sup>56</sup>

He goes on to list the interested parties who may not act as *iudex* in such a case, before restating the provisions and discussing definitions of the terms in some detail.<sup>57</sup> After this he goes on to include defamation within the scope of the *lex Cornelia de iniuriis*:

si quis librum ad infamiam alicuius pertinentem scripserit composuerit ediderit dolove malo fecerit, quo quid eorum fieret, etiamsi alterius nomine ediderit vel sine nomine, uti de ea re agere

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<sup>54</sup> Levick 1999: 191.

<sup>55</sup> *Dig.* 47.10.5 pr.

<sup>56</sup> *Dig.* 47.10.5 pr

<sup>57</sup> *Dig.* 47.10.1-6.



liceret et, si condemnatus sit qui id fecit, intestabilis ex lege esse iubetur. eadem poena ex senatus consulto tenetur etiam is, qui epigrammata aliudve quid sine scriptura in notam aliquorum produxerit: item qui emendum vendendumve curaverit.

If anyone should write, compose or publish a writing pertaining to the disgrace or disrepute of another or viciously bring it about that any of these things be done, whether the publication be in someone else's name or anonymous, then action may be brought over the issue, and if the culprit be condemned, he shall be excluded from participating in making wills under the statute. The same penalty is extended by *senatus consultum* to anyone who produces epigrams or anonymous writing defaming another, as also to one concerned to traffic in such things.<sup>58</sup>

Modern scholars have questioned whether Sulla's original *lex* dealt with defamation as well as physical assault, pointing out that the evidence for prosecution under the *lex Cornelia de iniuriis* in the Republican period is meagre.<sup>59</sup> Ulpian's detailed description of its provision against assault, and forcible entry are all, as Crook points out, logical for legislation made to address the troubled situation of the late Republic.<sup>60</sup> Sulla's legislation did not include a separate *lex de vi* to deal with cases of violent assault; the *lex Lutatia de vi* created the first *quaestio de vi* in 78 BC.<sup>61</sup> However, as Mousourakis observes, there is a difference between "private" violence, which affected individuals, and "public" violence, which threatened the state through politically motivated

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<sup>58</sup> *Dig.* 47.10.5.9-10.

<sup>59</sup> Alexander 1990: 127, 333 lists only two trials which used the *lex Cornelia de iniuriis* and the second of these, that of C. Sempronius Rufus, may have been under the *lex Plotia de vi*. Gruen 1968: 263 discusses the lack of evidence for the *lex Cornelia* dealing with defamation in the Republic, observing "a proliferation of hypotheses is fruitless".

<sup>60</sup> Crook 1967: 252-3.

<sup>61</sup> Cic. *Cael.* 70. There is also evidence for a *lex Plotia de vi* in around 63 BC from e.g. Sall. *Cat.* 31 and Cic. *Fam.* 8.8. See Hough 1930 for a discussion of the possible chronology of this legislation.

organisation and arming of gangs.<sup>62</sup> The importance of distinguishing between personal assault and that of a seditious nature is suggested by the later *lex Julia de vi publica* and *lex Julia de vi privata* which formally differentiate between violence against individuals and the state.<sup>63</sup> It seems probable then that Sulla's *lex de iniuriis*, as described by Ulpian, dealt with physical assault against individuals and the *lex Lutatia de vi* represents a refinement in legal provision against violence four years after Sulla's legislation.

The *lex Cornelia de iniuriis* originally fulfilled a contemporary need to provide against housebreaking and assault, and it is true that there is no evidence of its use against defamation. However, Smith makes the sensible point that, despite difficulties of interpretation, Ulpian states clearly that the original *lex* included libel.<sup>64</sup> A *senatus consultum*, supplementary to the *lex*, then extended it. The historical sources supply information that can be used to bolster the material supplied in the *Digest* and date this to Augustus' principate. Suetonius reports that Augustus took action against pseudonymous and anonymous publications:

etiam sparsos de se in curia famosos libellos nec expavit et magna cura redarguit ac ne requisitis quidem auctoribus id modo censuit, cognoscendum posthac de iis, qui libellos aut carmina ad infamiam cuiuspiam sub alieno nomine edant.

[Augustus] did not even dread the lampoons against him which were scattered in the senate house, but took great pains to refute them; and without trying to discover the authors, he merely proposed that thereafter such as published notes or verses

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<sup>62</sup> Mousourakis 2003: 228 n. 199.

<sup>63</sup> *Dig.* 48.6-7. Though later authorities are quoted so that this may not accurately reflect the position in the first century.

<sup>64</sup> Smith 1951: 173-6. The principle that Ulpian's evidence should be trusted is sound, although he complicates his case with technical detail distinguishing *liber*, *libelli* and *carmina* which more modern scholarship does not support. Informal writing and lampoons will be discussed further in chapter 5.

defamatory of anyone under a false name should be called to account.<sup>65</sup>

Suetonius uses the verb *censuit* for Augustus' suggestion that pseudonymous libels should be suppressed. This is used for decrees issued by the senate, and since they usually complied with imperial requests in doing so, Suetonius' evidence suggests that this was when an SC was issued to extend the *lex Cornelia*.<sup>66</sup> Suetonius' account is not tied to a specific date, but the authorities were sufficiently disturbed by anonymous and pseudonymous pamphleteering in AD 6–9 that rewards were offered in order to find the offenders and information was laid.<sup>67</sup> It is a logical step for anonymous defamation to be treated as a criminal rather than a civil offence, and the *Digest* quotes Paul's explanation that anonymous libel is more suitable to investigation by a court of enquiry than by civil proceedings because of the difficulties of proof.<sup>68</sup> Bauman therefore suggests that both Suetonius and Ulpian refer to the same *senatus consultum* and that it was passed in about AD 6 to meet problems caused by widespread circulation of *libelli* by anonymous and pseudonymous authors.<sup>69</sup>

Such pamphleteering seems to have caused particular concern, centred around potential unrest encouraged by the elite. Dio describes “bulletins” (βιβλία) associated with the plot of Publius Rufus in AD 6:

ὁ δ' οὖν ὄμιλος, οἷα ὑπὸ τε τοῦ λιμοῦ καὶ ὑπὸ τοῦ τέλους τοῖς θ'  
ὑπὸ τοῦ πυρὸς ἀπολωλόσι κεκακωμένος, ἥσχαλλε, καὶ πολλὰ μὲν  
καὶ φανερώς νεωτεροποιὰ διελάλουν, πλείω δὲ δῆ. βιβλία νύκτωρ

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<sup>65</sup> Suet. *Aug.* 55.

<sup>66</sup> Rowe 2002: 64–5 points out that eventually the jurists cite not the *SCC* but the imperial *oratio* that prompted it because the senate was understood to act in accordance with the emperor's wishes.

<sup>67</sup> Suet. *Aug.* 51.1. Suet. *Aug.* 19.1 mentions Publius Rufus as ringleader of a conspiracy but adds no further information. Bauman 1974: 29–32; Levick 1999: 54–62 argue that this SC should be understood in a climate of political tension in AD 6–9, reflected in the exiling of both Agrippa Postumus and the younger Julia.

<sup>68</sup> *Dig.* 47.10.6

<sup>69</sup> Bauman 1974: 29–32.

ἐξετίθεσαν. καὶ ταῦτ' ἐλέγετο μὲν ἐκ παρασκευῆς Πουπλίου τινὸς  
 'Ρούφου γίνεσθαι, ὑπωπτεύετο δὲ ἐς ἄλλους: ὁ μὲν γὰρ 'Ροῦφος  
 οὔτε ἐνθυμηθῆναί τι αὐτῶν οὔτε πρᾶξαι ἐδύνατο, ἕτεροι δὲ τῷ  
 ἐκείνου ὀνόματι καταχρώμενοι. καινοτομεῖν ἐπιστεύοντο. καὶ διὰ  
 τοῦτο ζήτησίς τε αὐτῶν ἐψηφίσθη καὶ μήνυτρα προετέθη:  
 μηνύσεις τε ἐγίνοντο, καὶ ἡ πόλις καὶ ἐκ τούτων ἐταράττετο,  
 μέχρις οὗ ἢ τε σιτοδεία ἐπαύσατο, καὶ μονομαχίας ἀγῶνες ἐπὶ τῷ  
 Δρούσῳ πρὸς τε τοῦ Γερμανικοῦ τοῦ Καίσαρος καὶ πρὸς Τιβερίου  
 Κλαυδίου Νέρωνος, τῶν υἱέων αὐτοῦ.

Now the masses, distressed by the famine and the tax and the losses sustained in the fire, were ill at ease, and they not only openly discussed numerous plans for a revolution, but also posted at night even more numerous notices. Word was given out that all this had been planned and managed by one Publius Rufus, but suspicion was directed to others; for as Rufus could neither have devised nor accomplished any of these things, it was believed that others, making use of his name, were planning a revolution. Therefore an investigation of the affair was voted for and rewards for information were announced. Information began to be offered, and this also contributed to the commotion in the city. This lasted until the scarcity of grain was at an end and gladiatorial games in honour of Drusus were given by Germanicus Caesar and Tiberius Claudius Nero, his sons.<sup>70</sup>

Whether or not it is correct to conflate the *libelli* of Suetonius' account with Dio's βιβλία, there is other evidence for pamphlets attacking elite targets. A *liber* deriding Claudius' claim that he had pretended stupidity as a survival strategy had the Greek title *μυρων επανάστασις* and Suetonius describes it as having an

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<sup>70</sup> Cass. Dio 55.27.1-3.

*argumentum*.<sup>71</sup> When Sejanus was incensed by fictitious speeches published in the names of ex-consuls, the implication is that these are sophisticated publications, demonstrating literary talent as well as malice.<sup>72</sup> The danger of such *libelli*/βιβλία is underlined when Dio describes a similar incident in AD 12:

καὶ μαθὼν ὅτι βιβλία ἅττα ἐφ’ ὕβρει τινῶν συγγράφοιτο, ζήτησιν αὐτῶν ἐποιήσατο, καὶ ἐκεῖνά τε, τὰ μὲν ἐν τῇ πόλει εὐρεθέντα πρὸς τῶν ἀγορανόμων τὰ δὲ ἔξω πρὸς τῶν ἐκασταχόθι ἀρχόντων, κατέφλεξε, καὶ τῶν συνθέντων αὐτὰ ἐκόλασέ τινας.

And learning that some vituperative pamphlets were being written concerning certain people, [Augustus] ordered search to be made for them; those that were found in the city he ordered to be burned by the aediles, and those outside by the officials in each place, and he punished some of the writers.<sup>73</sup>

These βιβλία ἅττα ἐφ’ ὕβρει τινῶν συγγράφοιτο appear to have a clear parallel with Suetonius’ *libelli famosi*. There is an official search, the offending material is destroyed and authors punished. The exact process remains unrecoverable, but the incident clearly demonstrates the extent of imperial concern. The difficulty of controlling anonymous or pseudonymous works, especially when there was a concerted effort to circulate them, explains why criminal law was extended for use against them.

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<sup>71</sup> Suet. *Claud.* 38.3. ac ne stultitiam quidem suam reticuit simulatamque a se ex industria sub Gaio, quod aliter evasurus perventurusque ad susceptam stationem non fuerit, quibusdam oratiunculis testatus est; nec tamen persuasit, cum intra breve tempus liber editus sit, cui index erat μωρῶν ἐπανάστασις, argumentum autem stultitiam neminem fingere.

<sup>72</sup> Tac. *Ann.* 5.4.4. ferebantur etiam sub nominibus consularium fictae in Seianum sententiae, exercentibus plerisque per occultum atque eo procacius libidinem ingeniorum.

<sup>73</sup> Cass. Dio 56.27.1.

## 1.5 The Twelve Tables

The Twelve Tables, generally agreed to have been produced in the mid fifth century BC, form the earliest Roman law code. The text has not survived and the fragmentary evidence makes it difficult to reconstruct the Twelve Tables with certainty, let alone confidently interpret them. A particular difficulty arises from an apparent conflict in the surviving evidence between whether they provided redress for insults, or protection against magical curses. There is a further question over the penalty imposed for this offence.

Crawford argues for a reconstruction of the Twelve Tables through the identification of original elements. He suggests that Twelve Tables 8.1 reads:

*qui malum carmen incantassit ... <quive> occentassit*

*carmenve condisset*

Whoever cast a magic spell ... <or whoever> sing in enmity or  
compose a song<sup>74</sup>

Johnson et al offer an extended reconstruction in translation:

Whoever enchants by singing an evil incantation...

If anyone sings or composes an incantation that can cause dishonour or  
disgrace to another ... he shall suffer a capital penalty.<sup>75</sup>

Their evidence for the phrase *malum carmen incantassit* comes from Pliny the Elder:

non et legum ipsarum in duodecim tabulis verba sunt: qui fruges  
excantassit, et alibi: qui malum carmen incantassit?

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<sup>74</sup>Crawford 1996: 679.

<sup>75</sup>Johnson et al 1961: 11.

And are these not the words of the Twelve Tables themselves  
 “Whosoever shall have enchanted the harvest,” and elsewhere,  
 “Whoever enchants by singing an evil song?”<sup>76</sup>

However, Cicero’s evidence suggests that defamation was penalised:

XII tabulae cum perpauca res capite sanxissent, in his hanc  
 quoque sancendam putaverunt : si quis occentavisset sive carmen  
 condidisset, quod infamiam faceret flagitiumve alteri.

The laws of the Twelve Tables, although they impose a capital  
 penalty on very few offences, considered this ought to be  
 penalised among such offences: if anyone sings or composes a  
 song that can cause dishonour or disgrace to another.<sup>77</sup>

Since Cicero records that the crime causes someone to suffer *infamia* and  
*flagitium*, Crawford suggests he is confusing the legislation in the Twelve Tables  
 with the later scope of *iniuria*. This confusion is reflected in the Augustan  
 sources, which also offer evidence that the Twelve Tables provided against  
 defamation. Crawford believes that they were misled by Cicero, and this  
 confusion is encouraged further when Cicero observes that:

quamquam id quidem etiam duodecim tabulae declarant, condi  
 iam tum solitum esse carmen; quod ne liceret fieri ad alterius  
 iniuriam, lege sanxerunt.

And yet as much as this is also formally shown by the Twelve  
 Tables, namely that by that time the composition of songs was  
 regularly practised: because it is expressly enacted that this may  
 not be done to a neighbour’s detriment.<sup>78</sup>

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<sup>76</sup> Plin. *HN* 28,17. This is Johnson 1961: 11 Section 1a and = Crawford 1996: 677 source (a).

<sup>77</sup> Cic. *Rep.* 4.12. This is Johnson 1961: 11. Section 1b = Crawford 1996: 677 source (c ).

<sup>78</sup> Crawford 1996: 678 source (l) = *Tusc. Disp.* 4.2.4.

Crawford suggests that this led to the Augustan belief that making insulting songs was liable to prosecution and quotes Horace:<sup>79</sup>

quin etiam lex

poenaeque lata, malo quae nollet carmine quemquam

describi; vertere modum, formidine fustis

ad bene dicendum delectandumque redacti

and at last a law was carried with a penalty, forbidding the portrayal of any in insulting songs. Men changed their ways and terror of the cudgel led them back to goodly and gracious forms of speech.<sup>80</sup>

si mala condiderit in quem quis carmina, ius est

iudiciumque

If a man writes insulting songs against another there is a right of action and redress by law.<sup>81</sup>

Crawford includes Porphyrio's commentary in his evidence, which supports Horace's assumption that malicious verses can be prosecuted. It is less clear that this is a helpful addition since Porphyrio's assumptions may arise from the internal evidence and not independently. Crawford adds the observation by the Augustan jurist Labeo that "abuse is *iniuria*" (*convicium iniuriam esse*).<sup>82</sup>

The problem centres around what was meant by *carmina* which cause *infamia* and *flagitium*. Is this a matter of damage to someone's reputation, as in later cases of *iniuria*, or does it mean physical harm? Rives makes the sensible point

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<sup>79</sup> Crawford 1996: 677-8 also gives as evidence Porphyrio's commentary on Horace and Labeo *Dig.* 47.10.15.3.

<sup>80</sup> Hor. *Epist.* 2.1.153-5.

<sup>81</sup> Hor. *Sat.* 2.1.82-3.

<sup>82</sup> *Dig.* 47.10.15.3. See section 3 above for discussion of Labeo's evidence.



that the legislation should be considered in the context of its own time and purposes. He suggests that the conundrum becomes clearer if “we do not think of (The Twelve Tables) as laws against magic”.<sup>83</sup> Rives’ suggestion is therefore that the Twelve Tables offered redress against “malediction” – any kind of dangerous speech.<sup>84</sup> Defamation and magic were not presented as alternatives, but as points on the same spectrum. Watson, similarly, argues that “the uttering of abuse and the act of pronouncing a curse were thought of as closely related”.<sup>85</sup>

However, this still does not answer the question of whether there was a difference between *carmina* and *convicium*. Removing the term “magic” does not make the problem of definition disappear; it is necessary to understand what *carmina* meant to the original legislators. Rives contends that *fruges excantassit* and *carmen incantassit* are parallel phrases with technical meaning.<sup>86</sup> They describe the alteration of a physical state – “chanting out” in order to remove crops from a field or “chanting against” someone in order to harm them. Fortunately, there is evidence of other *carmina*, such as one Cato records for curing a dislocation or fracture to support this definition:

harundinem prende tibi viridem P. IIII aut quinque longam,  
mediam diffinde, et duo homines teneant ad coxendices. incipe  
cantare: “motas uaeta daries dardares astaries dissunapiter” usque  
dum coeant.

Take a green reed four or five feet long and split it down the middle, and let two men hold it to your hips. Begin to chant:

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<sup>83</sup> Rives 2006, 2002.

<sup>84</sup> Rives 2002: 271.

<sup>85</sup> Watson 1991: 47. Watson discusses *defixiones* or curse tablets, which are not included here for reasons of space and because it appears the Twelve Tables were concerned with spoken charms (*incantassit*, *occantassit*). “Curse poems” such as Ovid’s *Ibis* represent a literary development that relates only indirectly to the Twelve Tables.

<sup>86</sup> Rives 2002: 283-8.

“motas vaeta daries dardares astaries dissunapiter” and continue until they meet...<sup>87</sup>

This shows that a *carmen* was chant, aided by a physical ritual, which its practitioners believed would bring about a physical change. Moreover, we can have confidence that these chants remained constant over long periods of time. Iona and Peter Opie found evidence of wart charms recorded in Pliny’s *Natural History* and still used in twentieth-century England, while the modern children’s counting rhyme “eeny meeny miny moe” preserves a centuries-old shepherds’ chant.<sup>88</sup> There is therefore no reason to question that Cato preserves an ancient *carmen*.

The Elder Pliny examines the question of whether or not words (*verba*) and incantations (*incantamenta carminum*) are effective and refers to Cato’s cure with apparent scepticism in his detailed list of literary and anecdotal *carmina*. These include love charms, healing charms, and Caesar’s chanting to ensure a safe journey.<sup>89</sup> It is clear from Pliny’s list that such *carmina* were part of everyday life. Even the sceptical Pliny respected the power of words, discussing the importance of using exactly correct incantations in sacrifices. After all, Roman law required the accurate use of *formulae* and deviation meant a court case would be dismissed. Religious rites, too, required exactly the correct wording, or they were considered void.<sup>90</sup> The underlying conviction that words have a force that is both arcane and mundane is discernable in the Twelve Tables and survives into the imperial period.

Cicero’s evidence probably also preserves a reference to *carmina*. Crawford argues that the earliest uses of *occentare* have no connection with magic and

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<sup>87</sup> Cato, *Agr. Orig.* 160. Anderson 2006: 2-25 discusses the difficulties of defining folk-magic and beliefs.

<sup>88</sup> Opie and Opie 2001: 315-7; Opie and Opie 1969: 47-51. For continuity in transmission, see also Anderson 2006: 46-9.

<sup>89</sup> Plin. *HN* 28.10-22.

<sup>90</sup> Plin. *HN* 28.3.

denote insult. This view is supported by Smith, who accepts Fraenkel's argument that Cicero is quoting directly from the Twelve Tables.<sup>91</sup> However, Rives observes that in Plautus, the locked-out lover Phaedrus sings at the door bolts to encourage them to open up.<sup>92</sup> Such a *carmen* has more in common with the charm preserved in Cato than with defamation and makes it probable that *occentassit* also denotes chanting.<sup>93</sup> Since *carmina* bring about physical changes, an ill-intentioned person could use them to cause harm rather than healing. Pharr describes cases where prosecutions for the use of potions hinge on whether or not the supplier acted with malicious or helpful intentions; there is a need to distinguish explicitly between *malum venenum* and *beneficum venenum*.<sup>94</sup> This parallel helps us understand that when the Twelve Tables carefully specifies that the use of *malum carmen* should be prosecuted, it is marking the distinction between “good” and “bad” types of *carmina*.

I suggest that the evidence is so confusing because not one, but two confluences have arisen over time. Firstly, the line between “cursing” and “insulting” is an extraordinarily fine one. It is not surprising that these concepts were not properly defined and did not need to be. An insult is indeed on the same spectrum as a curse. The difference is that a curse produces physical consequences. Pliny's account of the farmer defending himself against charges of “chanting out” his neighbours' crops by producing his happy workers and orderly equipment in court provides a good example of how such a charge would be brought in practice.<sup>95</sup> If someone came to court and argued that they were the victim of a *malum carmen* they would, *ipso facto*, show that they had been affected by

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<sup>91</sup> Smith 1951: 169.

<sup>92</sup> Crawford 1996: 679. *Occentare* is used by Plautus (*Curc.* 145; *Merc.* 408; *Persa* 569) to mean insult. The OLD gives the earliest usage for *to cast a spell* as Apul. *Apol.* 84. *quid si adeam ad fores atque occentem?*

<sup>93</sup> Plaut. *Curc.* 145 *quid si adeam ad fores atque occentem?* The chant follows in lines 148-152. *pessuli, heus pessuli, vos solute lubens/ vos amo, vos volo, vos peto atque opsecro/gerite amanti mihi morem, amoenissumi/fite causa mea ludii barbari/sussilite opsecro et mittite stanc foras/quae mihi misceo amanti ebibit sanguinem.*

<sup>94</sup> Pharr 1932: 287.

<sup>95</sup> Plin. *HN* 18.41-3.

supernatural chanting and not an insult. Since a *malum carmen* affects the victim physically, it gives rise to conflation between *carmina* and *iniuria* and explains why Cicero and Horace both understood that the Twelve Tables legislated against defamation.

Secondly, there is a later conflation between *carmina* and “magic”. “Magic” is notoriously difficult of definition; Kippenberg demonstrates that there was a small difference between “illegal” magic and “legal” religious rites. The chief distinction between state sanctioned rituals and “magical” ones was that magic was performed in secret. Such secrecy created a threat to public order and security and he argues that this is why, from the late Republic onwards, legislation targeted secret rites.<sup>96</sup> This gives a useful working definition for understanding what later Roman legislators considered as “magic”. Kippenberg suggests that there was an evolution in “magic” or *artes magicae* between the fifth century and the imperial period.<sup>97</sup> This was partly due to eastern influences and means that later legislation, such as the *lex Cornelia de sicariis et veneficiis* is not necessarily beneficial in reconstructing the concepts that informed the Twelve Tables.

There is a further difference in that, as Liebeschuetz observes, magic became an increasingly politicised charge under the empire.<sup>98</sup> It gave the prosecution an advantage in that it automatically blackened the character of the defendant. There are numerous examples where the sources report that magic is a factor as well as insult. The case of M. Scribonius Libo Drusus in AD 16 hinged on a paper with mysterious marks against the names of senators and members of the imperial family in Libo Drusus’ own handwriting. The expulsion and execution of astrologers and magicians in the immediate aftermath indicates the strength of

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<sup>96</sup> Kippenberg 1997: 153-7.

<sup>97</sup> Kippenberg 1997: 140-1.

<sup>98</sup> Liebeschuetz 1979: 133-8.

imperial feeling.<sup>99</sup> Clutorius Priscus' trial in AD 21 has elements of a charge against magic since Priscus wrote and recited a poem anticipating the demise of Tiberius' son Drusus and was prosecuted and executed.<sup>100</sup> The charges brought against Mamercus Aemilius Scaurus in 34 included addiction to magic rites.

We should not allow later conflation between *mala carmina*, *artes magicae* and *iniuria* to obscure the original legislators' intention. This was simple and practical. They wanted to provide redress for someone who was physically harmed by a *malum carmen*. This makes sense in context and there is sound evidence that belief in such *carmina* survived into a much later period. The conflation also explains confusion over the penalty described in the Twelve Tables. Crawford rejects the idea of capital punishment outright, because of the lack of evidence that the death penalty was ever applied for singing insulting songs.<sup>101</sup> However, if the penalty is actually for using *carmina* to someone's detriment, the dangerous and uncontrollable nature of such supernatural actions makes the severe penalty entirely plausible. Other references to beating to death with cudgels are military in context, but practising harmful magic is a capital offence in later law codes and indeed in many other cultures.<sup>102</sup> Smith, sensibly, suggests that since the penalty for defamation in the Twelve Tables was so ferocious, the praetor's edict had modernised this and treated defamatory speech as *iniuria* to avoid untoward severity.<sup>103</sup> Smith dates this development to the end of the second century BC and Cicero's evidence is sufficient to suggest, despite Crawford's reservations, that the penalty was indeed a capital one.

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<sup>99</sup> Garnsey 1970: 110 makes the plausible but unprovable suggestion that the astrologers executed were those Libo Drusus had consulted.

<sup>100</sup> The case presents anomalies beyond the scope of the present discussion but for a political and dynastic interpretation of events see Levick 1999: 149-50.

<sup>101</sup> Crawford 1996: 679.

<sup>102</sup> For cudgelling as a military penalty, see for example Cic. *Phil* 3.6.14; Tac. *Ann.* 3.21, Livy 5.6.14. For capital charges for practising magic, see Pharr 1932: 278-295. UNICEF is currently investigating cases of children killed for practising witchcraft in sub-Saharan Africa. See [www.unicef.org/wcaro/wcaro\\_children-accused-of-witchcraft-in-Africa.pdf](http://www.unicef.org/wcaro/wcaro_children-accused-of-witchcraft-in-Africa.pdf). Note UNICEF's definition of witchcraft as "an ability to harm someone through the use of mystical power".

<sup>103</sup> Smith 1951: 170-1.

Ultimately, little is to be gained by trying to press the fragmentary evidence too far, but it is most likely that the Twelve Tables provided for action against the use of ill-intentioned *carmina* which caused someone physical harm. This was subject to capital punishment if proven because of the frightening nature of such a supernatural phenomenon and the risk of further damage. The effect on the victim was understood to be serious, causing them to suffer *infamia* or *flagitium*. Changing concepts both of “magic” and *iniuria* meant that by the late Republic, Cicero believed that the Twelve Tables treated defamation as equivalent to physical assault and explains why there is an apparent conflict in the evidence about the original legislation.

### 1.6 *Maiestas* and *perduellio*

Tacitus tells us that defamation was prosecuted as *maiestas* for the first time under Augustus:

nam legem maiestatis reduxerat, cui nomen apud veteres idem, sed alia in iudicium veniebant, si quis prodicione exercitum aut plebem seditionibus, denique male gesta re publica maiestatem populi Romani minuisset: facta arguebantur, dicta inpune erant. primus Augustus cognitionem de famosis libellis specie legis eius tractavit, commotus Cassii Severi libidine, qua viros feminasque inlustris procacibus scriptis diffamaverat.

For [Tiberius] had resuscitated the *lex Julia de maiestate*, a statute which in the old jurisprudence had carried the same name but covered a different type of offence – betrayal of an army; seditious incitement of the populace; any act, in short, of official maladministration diminishing the “majesty of the Roman nation”. Deeds were challenged, words went immune. The first to take cognizance of written libel under the statute was Augustus; who was provoked to the step by the effrontery with which

Cassius Severus had blackened the characters of men and women of repute in his scandalous effusions.<sup>104</sup>

The charge of diminishing the greatness (majesty) of the Roman people originated in either 103 or 101–100 BC with the *lex Appuleia de maiestate* of L. Appuleius Saturninus.<sup>105</sup> Whichever date is correct, Saturninus' *lex* established a *quaestio* court, which acted as a “board of enquiry” to investigate allegations, with a presiding praetor and jury. There was a fixed penalty for conviction. The recent trials for *perduellio* or military treason of those generals and senators believed to have colluded with Jugurtha provided precedents for Saturninus' legislation.<sup>106</sup> This was introduced amidst a climate of political unrest and faction, and Saturninus may have intended his *quaestio* to check the influence of the *optimates* in jury trials.<sup>107</sup> The exact number and scope of further laws are debated. Q. Varius Hybrida extended the definition of treason to those that allied against Rome during the Social War and there is discussion as to whether or not Varius' was a permanent *quaestio*.<sup>108</sup> Sulla's *lex Cornelia de maiestate* set up a standing *quaestio* and probably extended Varius' law. Cicero provides secure evidence that Caesar passed a *lex Julia de maiestate* when he complains of failure to apply its penalties properly.<sup>109</sup> It is not clear whether a second law was passed during Augustus' principate. Allison and Cloud discuss the evidence in the legal sources, which has been used to suggest that he did, and argue that this is so much later in date that it cannot be interpreted with any confidence.<sup>110</sup> Nor

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<sup>104</sup> Tac. *Ann.* 1.72.2-3.

<sup>105</sup> Gruen 1968: 167 argues for 103, as does Bauman 1967: 40-58.

<sup>106</sup> Sall. *Iug.* 40.1-5.

<sup>107</sup> Gruen 1968: 14; 87-9; 158-60 illuminates factional struggles by discussing jury changes in *quaestiones*. The first *quaestio* was set up by the *lex Calpurnia de repetundis* in 149 BC with a senatorial jury to try its peers accused of corruption in the provinces. Under Saturninus' law, the jury was selected from the *equites*. Gruen 1968: 168 suggests that Saturninus intended “to entrench the popular control of the judicial processes” by weakening senatorial influence. Sulla's legislation restored control of the courts to the senate.

<sup>108</sup> Asconius on Cic. *pro Scaur.* 22.79. Gruen 1968: 215-20 sees this as part of continuing factionalism among the oligarchy. See also Bauman 1967: 40-58.

<sup>109</sup> Cic. *Phil.* 1.9.23.

<sup>110</sup> Dig. 48.4.3 and *Sententiae Pauli* 5.29.1; see Allison and Cloud 1962: 714-6.

is there secure, contemporary evidence for a new *lex de maiestate* in Augustus' principate.<sup>111</sup> Since Tacitus says that Augustus acted against libellous writing "under the appearance of the *lex Julia de maiestate*", it seems likely that an SC supplementary to Caesar's *lex de maiestate* provided for that during Augustus' principate.<sup>112</sup>

Tacitus, in the passage cited above, explains that *maiestas* used to be "a different type of offence", of military treason or encouraging the people to rebel. There is therefore a conceptual difficulty caused by the conflation of *perduellio* (i.e. military treason) and *maiestas* (i.e. diminishing the majesty of the Roman people). Bauman crystallises the problem as a "failure" to distinguish between what he describes as "*perduellio*-type" crimes and defamation. For Bauman, this means that Roman authors "seem quite unable to achieve a stable position either terminologically or conceptually" between the two offences.<sup>113</sup> Since Ulpian's definition of *maiestas* is confined to military treason and makes no mention of defamation, Rogers deals with the difficulty by arguing that there were two different and legally distinct categories of *maiestas* and *perduellio*.<sup>114</sup> His position is refuted by Chilton and by Allison and Cloud, but testifies to the enduring problem of the indeterminate nature of *maiestas*.<sup>115</sup> This problem occurs from the very origins of the legislation since it appears that Saturninus provided no clear definition for *maiestas*; Lintott points out that it is "impossible to be sure what the original legislator intended it to mean". We can be confident that it was used for treason and military incompetence (instead of *perduellio*) and

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<sup>111</sup> Allison and Cloud 1962: 717-23 prove that there is no evidence that Augustus passed a *lex de maiestate* and answer the arguments of Chilton 1955. Harries 2007: 79-84 provides a helpful summary. Bauman 1967: 34-87 and 155-68 fails to convince either that the different *leges* were not cumulative in their provision or that *maiestas* was an element in other laws. See Garnsey 1969 for a discussion of strengths and weaknesses of Bauman's detailed exposition.

<sup>112</sup> *primus Augustus cognitionem de famosiss libellis specie legis eius tractavit.*

<sup>113</sup> Bauman 1974: 1-2.

<sup>114</sup> *Dig.* 48.4.1. Rogers 1930.

<sup>115</sup> Chilton 1955 and Allison and Cloud 1962: 725-7 between them demonstrate that Rogers works from the outcome of cases to reconstruct their legal basis and that this technique, with his reliance on much later legal authorities, makes his position untenable. Griffin 1997: points out that the contemporary SC *de Cn Pisone patre* uses only the term *maiestas*, not *perduellio*.



probably against tribunes or magistrates who opposed the will of the people.<sup>116</sup> That Sulla did not succeed in defining the charge more narrowly is illustrated when Cicero congratulates Appius Pulcher on escaping charges of *ambitus* (corruption). In Cicero's view his enemies would have been wiser to allege *maiestas* because the open-ended nature of the accusation made it easier to prove.

verum tamen est maiestas, etsi Sulla voluit, ne in quemvis impune declamari liceret, ambitus vero ita apertam vim habet, ut aut accusetur improbe aut defendatur.

There is something indeterminate about a *maiestas* charge, even though Sulla wanted a situation where no one could be attacked verbally (*declamari*) without any penalty being risked by the accuser, whereas corruption has obvious meaning, as it is either the defence or prosecution are acting dishonestly ....<sup>117</sup>

It is however far from clear that this ambiguity would have concerned a Roman lawyer. Cicero provides a definition of *maiestas*:

maiestatem minuere est de dignitate aut amplitudine aut potestate populi aut eorum, quibus populus potestatem dedit, aliquid derogare.

Treason (*maiestas*) is a lessening of the dignity or high estate or authority of the people or of those to whom the people have given authority.<sup>118</sup>

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<sup>116</sup> Lintott 1992: 95-6.

<sup>117</sup> Cic. *Fam.* 3.11.2. Cicero rather regrets the lost opportunity to defend Appius Pulcher against such a preposterous charge. Smith 1951: 176 argues that this is proof that Sulla tried and failed to define *maiestas*.

<sup>118</sup> Cic. *Inv. Rhet.* 2.17.52-5. Quoted 2.17.53.

However, he assumes that when it comes to a trial the defence will provide a counter-definition and the prosecutor must argue that their version is the more valid:

item infirmabitur, si turpis aut inutilis esse ostenditur eius descriptionis approbatio et, quae incommoda consecutura sint, eo concessio ostendetur – id autem ex honestatis et ex utilitatis partibus sumetur, de quibus in deliberationis praeceptis exponemus – et si cum definitione nostra adversariorum definitionem conferemus et nostrum veram, honestam, utilem esse demonstrabimus, illorum contra. quaeremus autem res aut maiore aut minore aut pari in negotio similes, ex quibus affirmetur nostra descriptio.

The definition of the opponents may also be attacked if we show that to approve it is dishonourable and inexpedient, and point out what disadvantages will follow if their definition is accepted (this is based on the concepts of honour and advantage which we shall expound in giving the rules for speeches before deliberative bodies); and if we compare our definition with that of our opponents and prove that ours is true, honourable and expedient and theirs is the opposite. Furthermore we shall search for cases of greater or less or of equal seriousness to support our definition.<sup>119</sup>

The unknown but contemporary author of the *Ad Herennium* describes *maiestas* in similar terms and gives comparable advice to Cicero's:

cum definitione utemur, primum adferemus brevem vocabuli definitionem, hoc modo: “maiestatem is minuit, qui ea tollit, ex

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<sup>119</sup> Cic. *Inv. Rhet.* 2.17.53-4.

quibus rebus civitatis amplitudo constat. quae sunt ea  
...? suffragia populi et magistratus consilium.”

When we deal with the issue of definition, we shall first briefly define the term in question, as follows: “He impairs the *maiestas* of the state who destroys the elements constituting its dignity. What are these...? The suffrage of the people and the counsel of the magistracy.”

The defence is advised to argue that the majesty of the state has been promoted, not diminished, by their actions:

“ego non adfeci, sed prohibui detrimento: aerarium enim conservavi, libidini malorum restiti, maiestatem omnem interire non passus sum.”  
primum igitur vocabuli sententia breviter et ad utilitatem adcommode causae describitur; deinde factum nostrum cum verbi descriptione coniungetur; deinde contrariae descriptionis ratio refelletur, si aut falsa erit aut inutilis aut turpis aut iniuriosa.

“I have not inflicted, but rather prevented, damage, for I have preserved the treasury, resisted the licence of wicked men, and kept the majesty of the state from perishing utterly.” Thus the meaning of the term is first explained briefly, and adapted to the advantage of our cause; then we shall connect our conduct with the explanation of the term; finally, the principle underlying the contrary definition will be refuted, as being false, inexpedient, disgraceful, or harmful.<sup>120</sup>

Two points arise from this problem of definition in cases of *maiestas*. The first is that there is some overlap between *maiestas* and the definitions of *iniuria* already encountered in the legal sources because both encompass a lessening of *dignitas*.

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<sup>120</sup> *Ad Herennium* 2.17.

What constituted *maiestas* was ill-defined, and the causes of *iniuria* were always open and fluid. It is therefore a short step to assimilating defamation which offended someone's dignity within the charge of *maiestas*. Secondly, since *maiestas* applied not only to the people but also to those to whom they had given authority, it is easily extended to encompass perceived defamation not only of the magistrates but of the emperor himself. By the end of the first century AD, Quintilian could write on questions of definition:

iniuriam fecisti, sed quia magistratui, maiestatis actio est.

You have committed *iniuria*, but because it was against a magistrate, the crime is *maiestas*.<sup>121</sup>

There is however some confusion about the first occasion when *maiestas* charges were brought in a case of defamation. Tacitus claims Cassius Severus was first defendant, while the elder Seneca has the rabidly vicious Titus Labienus.<sup>122</sup> The elder Seneca's account suggests that the cases were nearly contemporary and Bauman uses Jerome's evidence to argue that Severus was tried in AD 8.<sup>123</sup> It seems likely that Labienus' trial can be dated shortly before that of Severus. It is a major development in the treatment of defamation and various theories have been put forward in order to reconstruct the precise legal processes involved. These ultimately cannot be proved because of the absence of any further evidence.<sup>124</sup>

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<sup>121</sup> Quint. *Inst.* 5.10.39. Smith 1951: 177 suggests this was the case under the Republic, but there is no convincing proof that Cicero means that defamation of a magistrate was *maiestas*.

<sup>122</sup> Sen. *Controv.* 10. pr.7. Suet. *Calig.* 16.1 reports the rescinding of *senatus consulta* banning works by Severus, Titus Labienus or A. Cremutius Cordus. The similarities in the cases make it likely Labienus was also charged with *maiestas*. Tacitus' omission of Labienus may be explained by reasons of literary structure since Severus' case is the more interesting and relevant to Tiberius' reign and *Ann.* 4.21.3 describes Severus' second trial and relegation. See for example Morford 1990 for an examination of Tacitus delaying or omitting material on narratological grounds.

<sup>123</sup> Bauman 1974: 29.

<sup>124</sup> E.g. Bauman 1974: 43-51 attempts to reconstruct the exact legal process against Cassius Severus. Since other sources explicitly have Labienus or Severus as the first to suffer the penalty of book burning, Bauman conflates these with the account in Dio, which describes the burning of

The evidence does reveal that Labienus and Severus had offended many of the elite. Moreover, both men were of low class origins, rose to prominence through their skill in oratory and had a talent for making enemies. This left them isolated and vulnerable to attack, precisely the circumstances in which an ill-defined charge of *maiestas* would be useful. Some scholars have seen a difficulty because they offended “against men and women of rank”, so that the charge has been extended from the appointed magistrates of the Roman people to the elite as a group, and including elite women.<sup>125</sup> Since there is at least one other case where insulting the elite generally was treated as *maiestas*, this may be another example of a modern and perhaps *over*-legalistic approach to Roman law.<sup>126</sup> We can be certain that for the case to proceed, Augustus must have supported the accusation.

*Maiestas* charges continued to develop under Tiberius. The period of transition after Augustus’ principate was potentially dangerous because of its constitutional novelty and we know of mutiny among the legions and at least one plot against him.<sup>127</sup> In these troubled circumstances, Tiberius’ initial moderation is remarkable, and far greater than Tacitus implies. Early *maiestas* charges that included defamation were made against M. Granius Marcellus in 15 and Appuleia Varilla in 17 and in both cases Tiberius suppressed the defamation element and had other charges tried under the relevant law. The evidence

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anonymous pamphlets, and argues that Cassius Severus was tried and acquitted for anonymous pamphleteering in AD 6. He believes that there was then a second trial in AD 8 when a new *senatus consultum* extended the definition of libel further, and Cassius Severus was convicted for *maiestas*. It is not clear that the source evidence can be pressed so far, or that there is any advantage in trying to do so.

<sup>125</sup> See Allison and Cloud 1962: 719-20 and Bauman 1967: 199-245 on Augustus’ constitutional position and the development of imperial *maiestas*.

<sup>126</sup> Tac. *Ann.* 14.50.1 describes the *Codicilli* of Fabricius Veiento which insulted senators and priests.

<sup>127</sup> E.g. Suet. *Tib.* 25 on unrest at Tiberius’ accession; Cass. Dio 57.4-7 on the mutiny in Pannonia; Tac. *Ann.* 2.39-40 on Clemens’ revolt.

suggests that informers brought charges opportunistically and Tiberius wrote to the consuls stating the principle that:

[scripsit consulibus] non ideo decretum patri suo caelum, ut in  
perniciem civium is honor verteretur. ... deorum iniurias dis  
curae.

the deification of Augustus should not be used to the destruction  
of his countrymen ... the gods must look to their own wrongs.<sup>128</sup>

However, the position of the deified emperor did provide opportunities for prosecutors and Pliny goes as far as to allege that Tiberius deified Augustus in order to introduce *maiestas* charges.<sup>129</sup> The *SC de Cn. Pisone patre* shows that this was a factor from early in the principate, as the charge includes defiling the *numen* of the deified Augustus.<sup>130</sup> The puzzling case of Cremutius Cordus becomes more explicable if it represents the adjustment to the position of the deified emperor, since it concerned the prosecution of a work which Augustus had heard and praised.<sup>131</sup> Suetonius and Tacitus agree the charge was excessive praise of Cassius and Brutus and Dio adds that Cremutius Cordus failed to praise Augustus and Tiberius sufficiently. It may be that praising Caesar's assassins was interpreted as criticism of Augustus, Caesar's heir, and that this was more serious in regard to the deified emperor than it had been of the living one. Cremutius Cordus committed suicide, his works were burnt and Dio tells us that the aediles sought out private copies. It was noted in the introduction that

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<sup>128</sup> Tac. *Ann.* 1.73 3-4.

<sup>129</sup> Plin. *Pan.* 11.1. Tac. *Ann.* 2.50.2 reports that Tiberius distinguished between sacrilege against Augustus (which must always be investigated) and insults made against Livia or himself (not to be held legally accountable).

<sup>130</sup> *SCPP* 68-70. Piso was convicted of military treason, not defamation, but the inscription provides valuable evidence for contemporary procedures and penalties in *maiestas* trials before the senate.

<sup>131</sup> Bauman 1974: 100 suggests that Cordus' defence speech is intended as Tacitus' idea of a "model defence" against the charges. Levick 1999: 193-4 argues that use of the *maiestas* law developed during Tiberius' principate because Augustus' deification gave a new standing to the previous emperor.

Quintilian's description of the later, bowdlerised version of the *Annals* suggests we should not overstate the work's rehabilitation. Whatever brought Cordus to trial was clearly still unacceptable.<sup>132</sup>

The emperor's position is apparently complicated by his reply when the praetor sought clarification:

Tiberius, consultante Pompeio Macro praetore an iudicia  
maiestatis redderentur, exercendas leges esse respondit.

Tiberius, to an inquiry put by the praetor, Pompeius Macer,  
whether process should still be granted under this law (*lex Julia  
de maiestate*), replied that "the law ought to take its course".<sup>133</sup>

Tacitus presents Tiberius as the villain here, but if *maiestas* charges were rejected by the emperor in the senate, the praetor might reasonably wonder how he should proceed in his own court. Both Levick and Richardson suggest that the praetor's question is about due process in the appropriate jury court.<sup>134</sup> The senate sitting as a court of law was a new development under the principate and the *SC de Cn. Pisone patre* may shed light on the relationship between cases tried in the senate and those in the praetor's court.<sup>135</sup> The praetor is instructed to impose a penalty of *aquae et ignis interdictio* on Piso's associates and Mackay is probably correct to assert that this amounts to little more than a courteous *formula* towards the praetor; the senate had made the actual decision.<sup>136</sup>

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<sup>132</sup> Quint. *Inst.* 10.1.104.

<sup>133</sup> Tac. *Ann.* 1.72 3-4.

<sup>134</sup> Levick 1999: 191; Richardson 1997: 510.

<sup>135</sup> The constitutional basis of trials in the senate worries Robinson 1995: 8-9. Garnsey 1970: 25-27 suggests that it arose through convenience for political cases or for elite defendants.

<sup>136</sup> *SCPP* vv 121-3. Mackay 2003: 355. For discussion of the legal technicalities, including whether or not the senate could convict *equites* see Mackay 2003. Richardson 1997 is concerned to establish precise protocols which assume a more formal approach to legal process than the evidence suggests existed. There are clear parallels with the procedure against Cornelius Gallus, discussed in section 7.

The impact that *maiestas* prosecutions had upon freedom of speech will be explored further in chapter 4, as part of a wider discussion of the relationship between senate and emperor. The evidence presented here focusses upon legal processes, and sets the scene for future consideration. Charges of *maiestas* were mainly brought during Tiberius' principate and those of Gaius, Nero and Domitian. They needed imperial approval and without such support, they fell into abeyance.<sup>137</sup> The realities of imperial power are sometimes thinly veiled and the presence of the army must indicate explicit imperial approval, as for example when the Praetorian guard picketed Libo Drusus' home and watched his suicide.

Although *maiestas* charges needed imperial support, they were brought by individual senators against one another. The sources suggest that after the deaths of Germanicus and Drusus, Sejanus' growing influence led to faction and a resulting increase in *maiestas* cases.<sup>138</sup> Cremutius Cordus' case provides an example of how this worked in practice, since Tacitus tells us that Sejanus' allies brought the prosecution and Dio attributes it to his hostility. Further evidence of factionalism is shown as the accusers in one case themselves become victims of another intrigue. So Scaurus' accusers fell victim to charges of bribery and Tacitus reports that Libo's accuser over-reached himself and incurred the emperor's wrath eight years after the trial.<sup>139</sup> Despite the dangers, there were good reasons for bringing a *maiestas* charge in the senate. In a *quaestio* court, charges had to be restricted to the provisions of the *lex* that set up that court. A trial in the senate offered the flexibility of combining charges normally heard in separate *quaestiones* and so for example Mamercus Aemilius Scaurus could be charged with magic and adultery with Livilla. A conviction for *maiestas* brought enormous rewards to the accusers – the outrageous methods used to lure Titus Sabinus into expressing hostility to the emperor would not have been worthwhile

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<sup>137</sup> Examples of moderation and suppression of *maiestas*: Cass. Dio 66.19.1-3 on Titus. Cass. Dio 68. 1.2-3; Plin. *Ep.* 9.13 on Nerva. Cass. Dio 68. 6.4, Tac. *Agr.* 3, Plin. *Pan.* 1, 33-4, 42 on Trajan.

<sup>138</sup> Cass. Dio 57.19.

<sup>139</sup> Tac. *Ann.* 6. 30.1; 4. 29.3.



unless considerable profits were at stake. Moreover, *maiestas* allowed slaves' evidence to be used. Informers could thus undertake a "fishing expedition" by including *maiestas* in charges brought before the emperor or consuls, then gathering evidence to support the claims.<sup>140</sup>

The evidence suggests that *maiestas* charges have not moved very far from their politically ambiguous origin since entrapment of victims, excessive rewards and sycophantic thanksgiving must reflect imperial concern and approval.<sup>141</sup> Cases heard by the senate, sitting as a jury, with the consuls presiding must therefore be understood within their political and factional circumstances.<sup>142</sup> The precise legal process becomes less important than the pressure imposed by these particular political circumstances, and sometimes the sources show the senate under very great pressure indeed. Since the senate reacted to the emperor's perceived agenda, producing an *ad hoc* reaction through a *senatus consultum*, our sources are not overly concerned with the exact legal nature of charges and penalties for defamation.

## 1.7 The imperial sources

The first case that touches on defamation in Augustus' principate is that of C. Cornelius Gallus in about 26 BC. Although Gallus was a distinguished poet, it was not his literary work that got him into trouble. Appointed by Augustus to govern Egypt as prefect, it was alleged that he was insolent, disrespectful and self-aggrandising. Augustus' response was not litigation but *renuntiatio amicitiae*. That Gallus was denied entrance to Augustus' house and barred from entering imperial provinces illustrates the difficult position in which he now found himself. Although *renuntiatio amicitiae* was technically a private action, Augustus' power and position meant that an impact on public life was inevitable.

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<sup>140</sup> Garnsey 1970: 144; Harries 2007: 34. For *maiestas* trials under Tiberius see Levick 1999: 180-200, including the growing trend in "tacking on" *maiestas* charges.

<sup>141</sup> Levick 1999: 149-50.

<sup>142</sup> Garnsey 1970: 25-7. As discussed in section 2 above, the praetor's court probably dealt with cases which were not politically sensitive or which did not involve elite members of society.

The denial of imperial friendship had serious consequences for Gallus, because it made him vulnerable to faction within the senate. This pattern of a combination of imperial hostility and political faction leading to someone's downfall is repeated again and again. For example, Tacitus attributes the downfall of Scaurus in 34 to the enmity of Q. Naevius Cordus Sutorius Macro. Macro's denunciation of Scaurus' tragedy angered Tiberius and paved the way for formal charges against him. The sources show that when someone knows that they have incurred imperial displeasure, they understand that they have no further recourse left; usually suicide is their only option.<sup>143</sup> *Renuntiatio amicitiae* needs to be understood in its social as well as its legal context. Imperial displeasure had far-reaching consequences because of the danger of disgrace by association. So for example Ovid recounts that his friends abandoned him and is worried that his books will no longer circulate even in private hands.<sup>144</sup>

Ovid's relegation to Tomis in AD 8 fits the same paradigm as *renuntiatio amicitiae*, even if the process was different. The nature of the offence is opaque, since Ovid blames *carmen et error*. However, since his *Ars Amatoria* was published at least eight years before, the delay in Augustus' response is puzzling.<sup>145</sup> The work certainly formed part of the charge since Ovid repeatedly defends himself against criticism and the edict banned his books from imperial libraries.<sup>146</sup> The evidence from the exile poems must be used with caution since Ovid is writing to his own agenda and his sincerity is questionable, but the case does demonstrate that the decision was taken by the emperor alone. Ovid is

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<sup>143</sup> E.g. Tac. *Ann.* 6. 9.2 where Sextus Vestilius offends the emperor and suffers *renuntiatio amicitiae*. When his appeal for pardon is refused, he commits suicide.

<sup>144</sup> Ov. *Tr.* 1.9.16-26; 2.87-8; 3.1.77-82.

<sup>145</sup> Ov. *Tr.* 2.207. Bauman 1967: 240 believes Ovid's case was censorship since *Ars Am.* offended the emperor's views on marriage and the delay was caused while Augustus awaited an opportunity to act; see also Williams 1982: 20-21. Feeney 1992: 4 suggests that the emperor was not aware of the content of the *Ars Am.* until a hostile courtier brought it to his attention at a sensitive time. Others argue for a dynastic or political explanation e.g. Levick 1999: 60-61 suggests that Ovid failed to report something significant, possibly the marriage of Julia and D. Silanus.

<sup>146</sup> Defence: *Ars Am.* 1.31-4, 2.599-600, 3.27; reprised at *Tr.* 2.243-579, *Pont.* 3.3.49-58. Banned books: *Tr.* 1.1.109-118; 3.1.59-82.

explicit that no *senatus consultum* was issued and there was no special hearing.<sup>147</sup> Ovid's situation is also typical in that exile occurs because he fails to acquire patrons who can intervene with the emperor.<sup>148</sup> The imperial sources show that the emperor's decision affects all defamation cases and when there are acquittals, these are often due to direct intercession with the emperor. For example, in 23 C. Cominius was spared conviction through his brother's intervention for composing a lampoon against the emperor and in 66 Curtius Montanus was spared execution for his libellous verses in deference to his father. On those occasions that someone is convicted, the defendant's isolation is striking. For example Libo Drusus can find no one to act for him nor will anyone act as witness to Publius Anteius' will until reassured by Tigellinus.<sup>149</sup>

The evolving role of the emperor as the supreme patron in Roman society had serious implications for defamation and freedom of speech. This will require further consideration, but for now it should be noted that in December 69 Vespasian legally defined the emperor's position with regard to the law by the *lex de imperio Vespasiani*. Paragraph 6 of this law gave him the legal right to do whatever he thought necessary in the state's interests.<sup>150</sup> The extent to which this legislation was novel is unclear; both Gaius and Ulpian present similar formulations of the emperor's position in relation to the law and Brunt suggests that Vespasian's law was *tralatitium* and can be dated back to Gaius' accession in AD 37.<sup>151</sup>

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<sup>147</sup> Ov. *Tr.* 2.127-38. But e.g. Alden 2006 interprets *Tr.* 3.1 as "flippant" and "defiant"; Nugent 1990 on problems of sincerity and interpretation.

<sup>148</sup> E.g. Ov. *Pont.* 2.3 Maximus' loyalty in difficult times and attempts to help Ovid, *Pont.* 3.1. 114-66 directs to his wife on approaching Livia.

<sup>149</sup> Tac. *Ann.* 16.14.3.

<sup>150</sup> *ILS* 244.

<sup>151</sup> Ulpian at *Dig.* 1.3.31 princeps legibus solutus est and *Dig.* 1.4.1 quod princeps placuit leges habet vigorem. Gai. *Inst.* 1.5 constitutio principis est quod imperator decreto vel edicto vel epistula constituit; nec umquam dubitatum est quin id legis vicem obtineat, cum ipse imperator per legem imperium accipiat. Brunt 1977 discusses the legal basis of the emperor's power and argues that Vespasian's law, adapted for the political circumstances, was based on pre-existing Julio-Claudian legislation. For how far the emperor was bound by law, see Allison and Cloud

Whatever the precise legal basis for it, by the third century, Dio describes the emperor's situation as follows:

λέλυνται γὰρ δὴ τῶν νόμων, ὡς αὐτὰ τὰ Λατῖνα ῥήματα λέγει:  
τοῦτ' ἔστιν ἐλεύθεροι ἀπὸ πάσης ἀναγκαίας νομίσεώς εἰσι καὶ  
οὐδενὶ τῶν γεγραμμένων ἐνέχονται.

For [the emperors] have been released from the laws, as the very words in Latin declare; that is, they are free from all compulsion of the laws and are bound by none of the written ordinances.<sup>152</sup>

The emperor's attitude and the resulting reaction by contemporaries are therefore as influential in cases of defamation as the theoretical legal processes for dealing with *iniuria* and *maiestas*.<sup>153</sup> This particularly affects defamation of the emperor himself.

## 1.8 Penalties

Gaius provides information about the penalties imposed on someone convicted of causing *iniuria* in the praetor's court.<sup>154</sup> The plaintiff sets his own value on the loss of dignity and upon conviction the *iudex* decides whether or not this is justified. The exception is for *atrox iniuria* when the praetor himself decided the appropriate penalty; the *iudex* technically has authority to reduce this sum but never does so in practice, in deference to the praetor. Moreover, Gaius portrays a legal system that changes and evolves, since his account is concerned to show that things are no longer the same as they were at the time of the Twelve Tables.

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1962: 725-7. The authors describe Roger's arguments that the emperor was subject to his own laws as "clearly absurd" given the contents and language of contemporary imperial histories.

<sup>152</sup> Cass. Dio 53. 18.1.

<sup>153</sup> Sen. *Controv.* 10.5.21-2 recounts that the vitriolic slave-turned-historian Timagenes suffered no ill consequences from losing Augustus' friendship. However he was of low social standing and little was to be gained by pursuing him in the senate.

<sup>154</sup> Gai. *Inst.* 3.223-4.

This system provides financial compensation for the victim, taking into account the more serious nature of *atrox iniuria*.

For cases heard by the *quaestio* court, the penalty (*poena legis*) would be fixed by the law which set up the court. There is however no consensus among scholars as to what exactly the *poena legis* was for the various *maiestas* laws after 103 BC. Cicero provides evidence that in the late Republic, *maiestas* carried the death penalty but the convicted person was allowed to leave Rome and take up residence and citizenship in an allied city.<sup>155</sup> However, the situation is confused by a passage in the *Digest*:

Labeo existimabat capitis accusationem eam esse, cuius poena mors aut exilium esset.

Labeo thinks that a prosecution is a capital case whether the penalty is death or exile.<sup>156</sup>

Does this suggest that in the first century AD, a “capital penalty” included *interdictio aquae et ignis* (punishment that adversely affected the *caput* [life] of the convicted man) as well as execution? Levick argues that because *maiestas* related to the security of the Roman people, it always carried the death penalty which was commuted to exile by custom rather than by law.<sup>157</sup> Others argue that exile was the legal penalty and that the emperors acted outside their powers when they imposed the death penalty for *maiestas*.<sup>158</sup>

Tacitus provides evidence in the case of Clutorius Priscus in AD 21. It is not clear precisely what the charges against Priscus were, but they appear not to have been *maiestas* since Tacitus gives Manius Lepidus a speech which argues against the death penalty and for interdiction:

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<sup>155</sup> Cic. *Phil.* 1.9.23.

<sup>156</sup> *Dig.* 37.14.10.

<sup>157</sup> Levick 1979.

<sup>158</sup> E.g. Chilton 1955: 75; Allison and Cloud 1962: 723.

cedat tamen urbe et bonis amissis aqua et igni arceatur: quod  
perinde censeo **ac si lege maiestatis teneretur**.

“Expel [Priscus] however, from Rome, confiscate his property,  
ban him from fire and water: this is my proposal, and I make it  
*precisely as though he were guilty under the law of treason.*”<sup>159</sup>

Levick discusses the obscurity of the charge and the correct interpretation of Tacitus’ grammatical construction in order to argue that this is not conclusive proof that *interdictio aquae et ignis* was the penalty for *maiestas*. Although detailed and closely argued, her approach highlights the difficulties encountered in attempting to assess the penalties for *maiestas*. It is the familiar one of the lack of clear evidence – we are reduced to best guesses about procedures, charges and penalties, using evidence from the historians which is not intended as a legal commentary.<sup>160</sup> The sources portray a positive medley of penalties, which cover exile, imprisonment, and execution, usually pre-empted by suicide.<sup>161</sup> They describe the confiscation of property, which is often used to reward informers, the suppression of the name or portraits of the convicted man, and the banning and burning of works. Not all these penalties are imposed on every occasion and decisions differ with individual cases. Tiberius’ ruling that informers were entitled to their rewards even after the defendant’s suicide both emphasises the seriousness of *maiestas* charges and provides incentive to bring them. The sources record that a defendant’s suicide should mean his property was retained for the family, although this was sometimes ignored in practice.<sup>162</sup>

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<sup>159</sup> Tac. *Ann.* 3.50.4 (my emphasis).

<sup>160</sup> Levick 1979: 368-9.

<sup>161</sup> See Appendix for known penalties imposed for defamation from 27 BC – AD 117.

<sup>162</sup> Cass. Dio 58.15 reports that defendants committed suicide to preserve property for children. Tac. *Ann.* 6.29.2 says that suicide meant wills were valid (and so heirs would inherit). Griffin 1997: 263 suggests that “the point of the language used by the document of Piso’s suicide is to justify the confiscation of his property in contravention of the usual convention then obtaining”. Chilton 1955: 78-80 argues that the contemporary evidence demonstrates that the decision to confiscate property after the suicide of the defendant was made on an *ad hoc* basis but exceeded the *poena legis*.

The *SC de Cn. Pisone patre* lists the charges against Piso, including military treason and violating the *numen* of the deified Augustus.<sup>163</sup> The senate says that the defendant's suicide meant he escaped "the punishment he deserved" (i.e. execution) and adds penalties including a ban on the women of the family mourning his death, the abolition of the use of his *praenomen* and the removal of his statues and portraits.<sup>164</sup> The senate's decree confiscates Piso's property, except for a land grant which is returned to imperial ownership. However, provision is made for his sons and granddaughter to be provided for from the estate.<sup>165</sup>

So far, the evidence accords with a modern understanding of penalties applied in accordance with a systematic legal process, so that the convicted man's memory is suppressed and his estates confiscated. However, the inscription contains further information which challenges any conception that the senate applied penalties in such a way. Tiberius asked them:

[senatum rettulit] qualis causa M. Pisonis visa esset, cui relationi adiecisset, uti precum suarum pro adulescente memor is ordo esset, (et) qualis causa Plancinae visa esset, pro qua persona, quid petisset et quas propter causas, exposuisset antea.

how the case of M. Piso was regarded, to which item he added that this order should be mindful of his pleas on behalf of the young man; and how the case of Plancina was regarded for whom he had presented earlier his pleas and the reasons for them.<sup>166</sup>

The senate do not fail to pick up this imperial hint about M. Piso and Plancina. When penalties are listed, it is recorded that the senate granted M. Piso immunity

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<sup>163</sup> *SC de Cn. Pisone patre* vv 22-70, translated in Griffin 1997. For present purposes it does not matter whether the inscription represents one or four separate decrees by the senate. See Mackay 2003: 312-337 for discussion of different interpretations of issuing the *senatus consultum/a*.

<sup>164</sup> SCPP vv 71-90.

<sup>165</sup> SCPP vv 83-105.

<sup>166</sup> SCPP vv 7-9.

and part of his father's estate "in agreement with the humanity and restraint of its Princeps."<sup>167</sup>

The senate is as responsive to Tiberius' hint about Plancina, and express themselves so delicately it is worth quoting in full:

quod ad Plancinae causam pertineret, cui plurima et gravissima crimina obiecta essent, quoniam confiteretur se omnem spem in misericordia(m) principis nostri et senatus habere, et saepe princeps noster accurateq(ue) ab eo ordine petierit, ut contentus senatus Cn. Pisonis patris poena uxori eius sic uti M. filio parceret, et pro Plancina rogatu matris suae deprecari se et, quam ob rem et mater sua inpetrari vellet, iustissimas ab ea causas sibi expositas acceperit, senatum arbitrari et Iuliae Aug(ustae), optume de r(e) p(ublica) merita(e) non partu tantummodo principis nostri, sed etiam multis magnisq(ue) erga cuiusq(ue) ordinis homines beneficis, quae, cum iure meritoq(ue) plurimum posse(t) in eo, quod a senatu petere deberet, parcissime uteretur eo, et principis nostri summa(e) erga matrem suam pietati suffragandum indulgendumq(ue) esse remittiq(ue) poenam Plancinae placere.

That as regards the case of Plancina, against whom many extremely serious charges had been brought, since she was now admitting that she placed all her hope in the mercy of our *princeps* and the senate, and our *princeps* has often and pressingly requested from this order that the senate be satisfied with the punishment of Cn. Piso senior and spare his wife as it spared his son M(arcus), and pleaded himself for Plancina at the request of his mother and had very just reasons presented to him by her for wanting to secure her request, the senate believes that to Iulia

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<sup>167</sup> SCPP vv 100-3.



Augusta (Livia), who had served the commonwealth superlatively not only in giving birth to our *princeps* but also through her many great favours towards men of every rank, and who rightly and deservedly could have supreme influence in what she asked from the senate, but who used that influence sparingly, and to the supreme piety of our *princeps* towards his mother, support and indulgence should be accorded and has decided that the punishment of Plancina should be waived.<sup>168</sup>

The senate praise the *princeps* and his mother, laying emphasis on Livia's virtue and Tiberius' piety in responding to her wishes. Mackay suggests that this is done to obscure the harsher truth that the senate has conceded to Tiberius' request for mercy for his mother's friend.<sup>169</sup> This *ad hoc* approach to applying penalties and their adjustment when the defendant had imperial support goes a long way towards explaining the variation in application and harshness of penalties for *maiestas* in the first century. It is not a matter of following and applying a set of "rules" but a flexible arrangement that differed with different circumstances.<sup>170</sup>

Pliny provides support for such flexibility in his account of the trial of Julius Bassus:

quia scilicet et Macro legem intuenti consentaneum fuit damnare eum qui contra legem munera acceperat, et Caepio cum putaret licere senatui – sicut licet – et mitigare leges et intendere, non sine ratione veniam dedit facto vetito quidem, non tamen inusitato.

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<sup>168</sup> SCPP vv 109-20.

<sup>169</sup> Mackay 2003: 349.

<sup>170</sup> Levick 1979: 374-5 on the senate's responsive approach. Allison and Cloud 1962: 726-7 suggest that Roman opinion (unlike modern legal historians) was satisfied provided penalties did not exceed a perceived "legal framework".

Macer, following the law, regarded it as appropriate to condemn one who had illegally accepted gifts, while Caepio, since he believed that the senate had the power (as in fact it has) both to soften and intensify the rigour of the law, had some justification in proposing pardon of an action which was admittedly forbidden, but was not without precedent.<sup>171</sup>

It is illuminating that the forbidden but not unprecedented view prevails; both the *SC de Cn. Pisone patre* and Pliny's letter show the importance of considering how legal process worked in practice rather than relying on theory.

## 1.9 Burning and banning books

The elder Seneca says that Labienus' books were the first to be burned in a case of defamation, with Severus' works following soon after.<sup>172</sup> Tacitus has Cassius Severus as the first to suffer the penalty. Either way, that provides a date of around AD 8 for the first occasion when book burning was associated with defamation. Not only that, but Suetonius preserves evidence that works by Labienus, Severus and Cremutius Cordus were banned from being owned and circulated by order of the senate. Dio describes the aediles and magistrates hunting out and burning anonymous books in AD 6 and 12. Later in the century, Tacitus describes Domitian ordering the burning of works by Arulenus Rusticus and Herennius Senecio. The sources express unease about book burning. For example, Seneca condemns it, linking literature with glory and book burning with suppression.<sup>173</sup> Anxiety is suggested by a popular topic in schools of declamation: *Antony promises to spare Cicero's life if he burns his writings: Cicero deliberates whether to do so.*<sup>174</sup> Tacitus uses it as an occasion for rhetorical grandstanding on tyranny, and its long term inability to suppress

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<sup>171</sup> Plin. *Ep.* 4.9.17.

<sup>172</sup> Sen. *Controv.* 10, pr. 4, 7.

<sup>173</sup> Sen. *Controv.* 10, pr.5.

<sup>174</sup> Sen. *Suas.* 7.

*libertas*.<sup>175</sup> It is clear that book burning made a significant impact upon contemporaries. There is also evidence for works being banned from imperial libraries – Ovid uses the conceit of his book travelling to Rome and not finding its “brothers” on the library shelves.<sup>176</sup> He returns to the theme in *Tristia* 3.14, probably addressed to the Palatine librarian Hyginus.

As well as suppression of contemporary writings, Gaius is alleged to have considered destroying Homer’s poems and is described as “almost” removing the works of Virgil and Livy, along with their busts, from imperial libraries.<sup>177</sup> Suetonius presents this as evidence for his increasing megalomania, but Goodyear argues instead that he acted on literary grounds, due to his dislike of their style.<sup>178</sup> This is plausible, and a reminder that the emperor’s influence extended beyond the legal sphere. There is other evidence for imperial tastes influencing what was produced: Starr suggests that under Tiberius there was a vogue for obscure didactic poetry by Euphorion, Rhianus and Parthenus.<sup>179</sup> Horsfall argues for the role of imperial libraries in giving books status, so that contemporary literary interests were actively guided by the inclusion of particular works.<sup>180</sup> The likeliest explanation is that we should see literary considerations as separate from punitive burning or banning of books. Gaius’ threat to burn works he disliked thus becomes an extreme example of imperial interest in literature, rather than having legal implications.<sup>181</sup>

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<sup>175</sup> E.g. Tac. *Ann.* 4.34-5; *Agr.* 2-3.

<sup>176</sup> Ov. *Tr.* 3.1. Newlands 1997 analyses the poem, noting the “faux naïveté” of the narrator and arguing it is a “witty, impudent poem that bitterly exposes the narrow-mindedness and inconsistency of those who have relegated Ovid to the margins of the civilised world”.

<sup>177</sup> Suet. *Calig.* 34.2 cogitavit etiam de Homeri carminibus abolendis, cur enim sibi non licere, dicens, quod Platoni licuisset, qui eum e civitate quam constituebat eiecerit? sed et Vergili ac Titi Livi scripta et imagines paulum afuit quin ex omnibus bibliothecis amoveret, quorum alterum ut nullius ingenii minimaeque doctrinae, alterum ut verbosum in historia neglegentemque carpebat.

<sup>178</sup> Goodyear 1984: 607-8.

<sup>179</sup> Starr 1987: 216; Suet. *Tib.* 70.2.

<sup>180</sup> Horsfall 1993.

<sup>181</sup> See for example Sullivan 1985 on the importance of literature under Nero. Kenney 1982 argues for the importance of libraries in preserving and transmitting literature.

The situation is further complicated because a *princeps* could reverse his predecessor's decision. This meant that previously offending works were allowed to be owned, circulated and read once more. Part of the problem of interpretation arises from the natural tendency to draw parallels between what the sources describe in Rome and book burning in early modern Europe. Although Kenney dismisses this comparison, because of the different mechanisms of censorship after the invention of the printing press, I would suggest that it is useful to note how widely levels of control and attempts to enforce censorship varied in the early modern era. This provides insight into the complicated forces that affect book burning and counters notions that it has a simple, single "political" cause.<sup>182</sup> So, for example, the Inquisition was not solely concerned with "censorship": of approximately 1500 denunciations made at Venice, 800 were against "Lutheranism", 35 against Anabaptists, 190 for magic, superstition or sorcery and 70 for Judaism. Only 150 or about 10% concerned the printing, selling or owning of prohibited books.<sup>183</sup> Effective control required the co-operation of the secular authorities, and that depended upon how closely they wanted the support of the Church at the time. The Republic of Venice produced its own *Catalogo* in 1549, listing banned works by 47 Protestant authors and a further hundred others, but that was not enforced. Since nobles were hostile to Rome and had personal loyalties to their friends, relations and clients, it was effectively worthless. In March 1559 the Republic of Venice decreed that the Inquisition was welcome to burn banned books, provided they bought them from the book-shops first. Soon after fears arose over the influence of home-grown heretics – an understandable sensitivity, since the religious wars currently ravaging France showed just how much damage that could inflict. At the same time, Venice experienced economic difficulties as the Ottoman Empire encroached on their eastern Mediterranean territories. This caused a change of heart, so that the Republic now wanted an alliance with the Pope. They therefore worked closely with the recently formed

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<sup>182</sup> Kenney 1982: 4.

<sup>183</sup> Pullan 1983: 9-14.

Inquisition, enforcing pre-publication censorship, inspecting book-shops and homes, and destroying books banned by the *Index Librorum Prohibitorum*, first published in 1554 and revised subsequently.<sup>184</sup> Towards the end of the century, as relations between Venice and the Pope soured, the situation was reversed. Events in Paris followed a similar pattern, and the impact of patronage to assist individual printers is, if anything, more marked. All these points – that book burning is affected by different vested interests, and by individuals’ differing concerns, thrives in difficult political situations and can change abruptly and without warning – provide parallels with the situation in the early Roman empire.

The evidence also suggests that book burning in Rome was used as a form of social sanction.<sup>185</sup> It was not just the burning, but the public display that mattered. The elder Seneca describes book burning as an “insult” (*contumelia*) and reports that seven of Scaurus’ orations were burnt by senatorial decree.<sup>186</sup> He thinks this is no bad thing, and it was clearly never intended as total destruction, since he tells us that Scaurus’ works survive – “*extant libelli*”. This may perhaps refer to his notes before he worked up the speeches into published form. That destruction was only partial provides further evidence that book burning functioned as a disgrace rather than as a mechanism to suppress works entirely. Burning books to make a public point occurs when the Greek historian Timagenes destroyed his history of the *princeps*’ achievements in protest at his expulsion from Augustus’ house. Seneca preserves an account of Asinius Pollio taking him into his household, with Augustus’ permission: “‘*fruere,*’ inquit ‘*mi Pollio, fruere!*’”<sup>187</sup> This is not the tone of an emperor who is seriously offended

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<sup>184</sup> See for example Grendler 1981, Higman 1979, Hirsch 1967, Tedeschi 1991.

<sup>185</sup> Williams 1982: 20 regards book burning as a “disgrace” rather than a systematic attempt to destroy works. He, however, argues that this was “certainly inspired ... by Augustus” while Raaflaub and Sammons 1990: 440-1 believe the initial decision was senatorial and encouraged by Labienus’ and Severus’ unpopularity. There is not enough evidence to carry either point, though it does seem certain that the penalty would not have been carried out without imperial approval even if that was implicit rather than explicit.

<sup>186</sup> Sen. *Controv.* 10, pr. 3. *Controv.* 10 pr. 7 (referring to the burning of Labienus’ works) *non tulit hanc contumeliam*.

<sup>187</sup> Sen. *De Ira* 3.23 4-8.

and there seems to be posturing on both sides. None the less, Timagenes clearly intended burning his work to be a public expression of contempt for the emperor.

This element of display is found in the account of Virgil wanting to have the *Aeneid* burnt, surely a genuine wish for the work to be destroyed and one which was overridden on the emperor's orders.<sup>188</sup> Ovid tells us that he himself burnt his *Metamorphoses* as he prepared for exile.<sup>189</sup> He regrets this but hopes surviving copies will circulate. He even wishes he had burnt *Ars Amatoria* before it caused trouble.<sup>190</sup> There are examples of correspondence being burnt so that it cannot be used for blackmail purposes. The sources praise this, even in the case of the freedman Narcissus, who is more usually treated with hostility.<sup>191</sup> Ostentatious burning of records so that they cannot be used to anyone's detriment makes a political point, that a new principate offers a fresh start.<sup>192</sup> The sources are appalled if this is revealed as insincere, counting it as a sign of imperial *saevitia* when copies are preserved and later used to settle old scores.<sup>193</sup>

Modern scholars have pointed out that in a society before the printing press, one surviving exemplar sufficed to provide further copies, so that book burning was not necessarily effective for the complete destruction of a work. There was no real way of policing who held copies, and little evidence of a desire to do so.<sup>194</sup> Where there is evidence of deliberate circumvention of bans – Cremutius' daughter preserved his works and Fannia took Senecio's books with her into exile – it comes from later sources, after the offending work has been

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<sup>188</sup> Suet. *Vita Vergili*.

<sup>189</sup> Ov. *Tr.* 1.7.15-40.

<sup>190</sup> Ov. *Tr.* 5.12.66-8.

<sup>191</sup> Cass. Dio 61.34.5 on Narcissus burning correspondence. Cass. Dio 63.15 and Suet. *Otho* 10, Otho burns his correspondence to stop it falling into the wrong hands. Cass. Dio 67.11.1-2 Lucius Maximus burns Antoninus' correspondence after his revolt against Domitian.

<sup>192</sup> For example, Suet. *Aug.* 32.2 burns records of debts to the treasury to end blackmail. *Calig.* 15.4, Gaius does the same, along with references to his family. Tac. *Ann.* 13.23 Nero has account books burned in the forum as a sign settlement of debts would not be demanded.

<sup>193</sup> Suet. *Calig.* 30.2 the burning of records is revealed as a trick and the letters used as evidence. Cass. Dio 59.4.3, 6.3, 10.8, 16.3 refers to the same incident. Cass. Dio 60.4.5 Claudius really does destroy them.

<sup>194</sup> Starr 1987; Kenney 1982.

rehabilitated. It is therefore positively biased towards praising them for “saving” the work. It may reasonably be questioned how far there was any real desire or ability to enforce a ban once a public book burning had been performed. Even Dio’s account of aediles at Rome and magistrates elsewhere hunting out Cremutius Cordus’ history for burning does not imply that this occurred on more than a single occasion in each town. There is no evidence for further efforts to prevent ownership and reading of the banned work, and it may be noted that this is not reported in the sources as the subject of denunciations. When treason charges could be brought for changing clothes near a statue of Augustus, or carrying a ring or coin stamped with his image into a privy or a brothel, the lack of evidence for possession of banned works forming grounds for charges suggests that it was not considered culpable.<sup>195</sup> Tacitus has an acerbic evaluation of Veiento’s *Codicilli* which only enjoyed popularity while they were dangerous to possess, after they were banned and burned. Once they were freely available, they sank into obscurity.<sup>196</sup> This strongly suggests that there was little effort at total suppression.

The situation thus becomes clearer if book burning is seen as a way of making a public statement, which could be either positive or negative. To burn one’s own work or material that threatened others could be commendable. Book burning imposed by the senate and enforced by the aediles was a sign of disgrace. Being a defendant in court was considered humiliating and the penalties of losing property, exile, even death associated with condemnations for *maiestas* were disgraceful ones.<sup>197</sup> In this context, burning the offending work was indeed a *contumelia*, as was removing books from libraries or forbidding them to be owned and circulated. However, this was not intended as a systematic attempt at suppressing the work, which explains why not all penalties were imposed on all occasions. Ovid’s depiction of imperial censure creating reluctance to read his

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<sup>195</sup> Suet. *Tib.* 58.

<sup>196</sup> Tac. *Ann.* 14.50.2.

<sup>197</sup> Harries 2007: 6-7. Bauman 1996: 4-15 discusses the disgrace of being on trial.

works and his fear that they will not circulate even in private hands is revealing.<sup>198</sup> Public book burning and the banning of works from libraries and general circulation emphasised the author's shame.

In contrast with this, there are the relatively few reported occasions when all copies of a work were sought out – in Rome and the municipal cities – and systematic destruction took place. These seem to have been items that constituted a political threat. Astrology and magic were dangerous since horoscopes and omens were widely believed. Predictions of future power or an emperor's death encouraged practical efforts to fulfil the prophecy. Augustus, in his role as Pontifex Maximus ordered over two thousand books of oracular writings to be burnt as early as 12 BC.<sup>199</sup> Approved portions of the Sibylline books were retained, firmly under imperial control, in two gilded cases under the pedestal of the Palatine Apollo. Cramer thinks that Augustus acted in his capacity as Pontifex Maximus to obscure the political implications of his actions, but this is an unnecessary refinement.<sup>200</sup> "Religious" prophecies threatened "political" unrest; Augustus was destroying works he considered detrimental to state security. Whether or not every copy was destroyed, he demonstrated their unacceptability and discouraged their retention and circulation. Similarly, evidence for anonymous pamphlets being sought out and destroyed suggests fear of a genuine threat to stability.

Book burning and banning made a political statement, but they cannot have meant total suppression and in most cases were never intended to do so. The purpose was to display imperial disfavour and create conditions for social censure so that others were unwilling to openly possess, discuss, or circulate works. That it was so unsuccessful is partly due to elite reluctance to comply, at least in the cases that we know about, and to the ease of preservation.

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<sup>198</sup> *Ov. Tr.* 2.87-8, 3. 1.77-82.

<sup>199</sup> *Suet. Aug.* 31.2.

<sup>200</sup> Cramer 1945: 166.



Furthermore, rapid political changes meant that a work one emperor suppressed was rehabilitated under a successor as a gesture of reconciliation. The exception seems to have been anonymous pamphlets which were always suppressed with vigour.

## 1.10 Conclusion

The legal evidence shows that defamation was a form of *iniuria* and so constituted an attack on someone's *dignitas*. The law allowed the victim to seek redress for the resulting disgrace in the praetor's court. The plaintiff might even seek compensation for *atrox iniuria* if the offence took place in a public setting, or was particularly severe, or was inflicted by someone of lower status.

Although it is probable that the praetor's court continued to try defamation, the historical sources are more interested in cases giving rise to criminal charges and heard by the senate. This change in the way that defamation was dealt with during the first century AD is a logical development. Defamation has the potential to extend beyond one individual's *dignitas* if it is made against prominent individuals or institutions. It becomes a criminal matter if it threatens the well-being of the state. Since the senate had flexibility to supplement existing laws from the time of Augustus onwards, it is probable that during Augustus' principate a *senatus consultum* supplementary to Sulla's law against physical assault provided for defamation. The assimilation of defamation with *lex Julia de maiestate* is an equally logical development because, like *iniuria*, *maiestas* relates to the *dignitas* of the plaintiff. Defaming someone of superior social status was considered particularly serious and *maiestas* specifically protected the dignity of Roman magistrates as agents of the *populus*.

Defendants were exposed to more serious penalties if they were tried for *maiestas*. The evidence suggests that a number of factors, including whether or not the defendant had imperial support, determined the severity of the sanctions. The evidence has shown that the emperor's perceived wishes were crucial to the course of trials in the senate; law, politics and the emperor's position are not

distinct elements. This is why Augustus could extend the ambiguous *maiestas* charges to incorporate defamation and why prosecutors seeking their own advancement could exploit them at times of political faction.

Sometimes modern authorities are inclined to be critical of what they see as a lack of precision in the historical sources, or even to suggest that the historical sources are misrepresentative of “proper” legal process. This should be approached cautiously because these sources were written by and for contemporary members of the Roman elite. As this chapter has shown, they represent an understanding of the law that differs from a western, twenty-first century perspective. So far as such an imaginative leap is possible, it would be wise to consider the evidence on its own terms rather than imposing modern expectations of due process. If discussion is based on what is known about the actual prosecutions for defamation, it provides a solid basis for considering the political, social and moral impact of events in the first century.

Three key themes have emerged from considering the evidence for legal control of speech. The first is the need to evaluate the ancient sources on their own terms rather than imposing our own expectations of what happened or how control operated. Secondly, these sources emphasise the importance of relative social standing in Roman society. They show that defamation gave offence because it harmed the way in which someone was perceived and so damaged their status. This concept is found in the legal sources, which define degrees of *iniuria* and distinguish when it becomes *atrox*, but the idea is more pervasive. All the contemporary sources are deeply interested in relative social status, and the impact of insult or ridicule. The final theme that emerges is the role of patronage, especially imperial patronage. This underpins all the accounts of prosecutions for defamation, with an individual’s relationship with the emperor proving more important than strict legal processes. Those three themes – not second guessing our sources, considering relative social standing, and the role of patronage recur when attention is turned to other aspects of freedom of speech. The next two

chapters take these themes and consider the impact of social conventions on freedom of speech in early imperial Rome.

## 2: Social conventions and status anxiety among the Roman elite: obscenity, humour and licensed insult

### 2.1 Introduction

The evidence for what caused a member of the Roman elite to take offence is confusing and apparently contradictory. Seneca's *Apocolocyntosis* is peppered with sexual and scatological jokes at the expense of the late emperor Claudius. Yet it was performed at Nero's court and circulated thereafter. Satirical poems about the elite by Cassius Severus, Antistius Sosianus and Fabricius Veiento have not survived for comparison, but we know that these authors were relegated. Martial quotes an obscene poem by Augustus to justify his own use of "plain Latin", but this same plain-speaking Augustus can be described as "disturbed" by Severus' licentiousness and disrespectful poems.<sup>201</sup> Imperial satirists condemn modern morals and manners, but are reluctant to identify influential contemporaries among their targets.<sup>202</sup>

Modern scholars often formulate this problem in political terms.<sup>203</sup> They point out that poets such as Juvenal and Martial depended upon their patrons and did not want to alienate them, while an elite Roman pursuing a public career needed support from his peers and seniors. However, it is not necessarily helpful to separate the "social" and "political" worlds of the Roman elite too completely. Poetry was recited at social occasions. Someone who wanted to achieve political office either had to win an "election" in the senate, or to be appointed by the emperor. This meant that candidates needed to cultivate the good opinion and

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<sup>201</sup> Tac. *Ann.* 1.72.3 *primus Augustus cognitionem de famosis libellis specie legis eius tractavit, commotus Cassii Severi libidine, qua viros feminasque inlustris procacibus scriptis diffamaverat.*

<sup>202</sup> E.g. Juv. 1.1-21. Although not all references in satire are disguised.

<sup>203</sup> E.g. Bartsch 1994; Rudich 1993, 1997, discussed in the introduction. Quint. *Inst.* 9.2.64-92 describes rhetorical techniques to avoid giving offence. Ahl 1984 analyses the use of *schema* to avoid offending the powerful.

active support of others. So, for example, Pliny routinely writes letters recommending friends for office or canvassing on their behalf.<sup>204</sup> Accordingly, this chapter and the next will explore the social norms that governed polite speech among the Roman elite. This will provide a more complete context to discuss “political” freedom of speech in chapters 4 and 5.

Chapter 1 demonstrated that offence was caused when someone felt that their status had been diminished, either through words or actions (*contumelia*, *iniuria*). Seneca’s theoretical discussion about anger confirms that this was an active concern in the competitive and highly status-conscious world of elite Roman society:

videamus quid sit quod nos maxime concitet: alium uerborum, alium rerum contumeliae mouent; hic uult nobilitati, hic formae suae parci; hic elegantissimus haberi cupit, ille doctissimus; hic superbiae impatiens est, hic contumaciae; ille seruos non putat dignos quibus irascatur, hic intra domum saevus est, foris mitis; ille rogari iniuriam iudicat, hic non rogari contumeliam.

Let us see what it is that especially irritates us. Some are enraged by insulting words, some by insulting actions. One man demands respect for his rank, another for his personal appearance. One wants a reputation for supreme elegance, another for supreme scholarship. Arrogance is unbearable to one man, obstinacy to another. One man does not think slaves worth his anger, another is fierce at home but mild outside. One man thinks it a disgrace to be asked for something, another finds it insulting not to be.<sup>205</sup>

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<sup>204</sup> E.g. Plin. *Ep.* 2.13, 5.14, 6.6.

<sup>205</sup> Sen. *De Ira* 3.10.4. There is a textual difficulty over whether to read *invidiam* or *iniuriam* in the last sentence quoted. Here I follow the reading supplied by the Oxford Classical text (with apparatus criticus). *iniuria* provides a satisfying balance to *contumelia* here.

The philosopher Epictetus illuminates the importance usually attached to marks of honour such as official positions and dinner-party invitations, when he warns his students against setting too much store by social aspirations.<sup>206</sup> These honours did not only concern the individuals involved, but informed wider social structures. Epictetus further recommends that his students should not be concerned with using their own position to help others.<sup>207</sup> This is radical advice because such marks of approval were integral to elite society and status was negotiated and enhanced through signs of esteem. Lendon goes as far as to argue that Tiberius orchestrated the downfall of Sejanus through selective insult and criticism and that Thrasea Paetus was intolerable to Nero because his behaviour diminished imperial honour.<sup>208</sup>

The terms that the sources use to refer to someone's status are *auctoritas* and *dignitas*. *Auctoritas* has a range of meanings related to the concepts of authority and influence, and is used particularly to denote influence upon others. It is a form of prestige, demonstrated by acknowledging that a particular person ought to be treated with deference. So, for example, when Otho advises his supporters to abandon him, Tacitus says:

iuvenes auctoritate, senes precibus movebat.

The young men he persuaded by his authority (*auctoritas*), the older by his appeals.<sup>209</sup>

Otho's *auctoritas* is a personal quality, which the *iuvenes* feel obliged to obey, but which is not sufficient to influence his seniors. The related term *dignitas* is used to denote worthiness of character. It can also be used to describe holding

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<sup>206</sup> Epictetus, *Manual* 24, 25.

<sup>207</sup> Epictetus, *Manual* 25.

<sup>208</sup> Lendon 1997: 141-5. While this pushes the argument to an extreme level, Lendon's examples show elite sensitivity to perceived insult and concern for saving face.

<sup>209</sup> Tac. *Hist.* 2.48. The *OLD* gives thirteen distinct shades of meaning for *auctoritas*, all incorporating concepts of esteem, prestige, authoritativeness.

office, because esteem was conferred by position.<sup>210</sup> These concepts share common ground as both denote the respect in which an individual is held by others. Their impact will be discussed further in section 3 below. Where translation is appropriate, *auctoritas* will be rendered as “authority” and *dignitas* as “status”.

The cases discussed here mainly concern the elite because most of the evidence comes from literary sources written by and for the elite or their protégés.<sup>211</sup> This means that the evidence is filtered through the perceptions of elite male authors, providing limited scope for extending the discussion to wider society. Discussion is complicated by the way that themes about offence overlap and interconnect in the primary sources. For example, satire reveals contemporary attitudes towards mockery, while the historical sources record actual exchanges – or at least claim that they do. In order to impose a coherent structure, the present chapter explores occasions when obscenities or insults might be acceptable to the elite. The following chapter will look at evidence for direct communication among the elite, and the strategies they employed for avoiding offence. It will also consider Roman attitudes to public and private communication and how those affected freedom of speech. This investigation is made possible because, just as in the modern world, when the sources criticise someone’s words or actions, they reveal their underlying attitudes about what was not acceptable. Chapters 2 and 3 form a complementary exploration of social conventions with regard to freedom of speech.

This chapter begins with a brief analysis of the terms the Romans employ for discussing how freely someone may speak, *libertas* and *licentia*. It then supplies

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<sup>210</sup> See e.g. Suet. *Claud.* 5.1 where Claudius abandons all hope of the dignity of office: *tunc demum abiecta spe dignitatis ad otium concessit*. The *OLD* has a mere four meanings for *dignitas*, the concept of someone showing distinction or worthiness.

<sup>211</sup> Ruffell 2003 discusses abuse and invective among the Roman elite and argues that surviving literary invective is informed by less polished, popular material and jingles appearing as graffiti or popular chants. However, almost all the surviving evidence has been transmitted through elite sources, particularly historians. Graffiti and popular protest will be discussed in chapter 5.

an overview of the Roman elite and its systems of patronage, in order to provide a framework for the discussion that follows. It will examine evidence for the concept that insult was licensed at certain times, and contend that concern with status imposed constraints even on such occasions. It will suggest that strategies were employed to make problematic material acceptable to an elite audience and to avoid challenges to individual status. The final section will look at the problem posed by humour and ridicule, and consider how far ridicule in oratory and satire is affected by anxiety over status. It will argue that concern for the greater moral good could justify outspoken remarks.

## 2.2 *Libertas* and *licentia*

The two words that Roman authors use most often in discussing freedom of speech are *libertas* and *licentia*. The most basic meaning of *libertas* is freedom, or independence. This encompasses social, political and physical freedoms from slavery, oppression and captivity.<sup>212</sup> Freudenburg argues that a native speaker perceived *libertas* as a combination of all these concepts of freedom. He suggests therefore that when *libertas* is used to describe speech, it is the frank and open speech which befits a free man, one of the defining features of the elite male.<sup>213</sup>

*Licentia* is also defined as “freedom”, but is usually presented as a negative quality, resulting in a lack of restraint and disorderliness.<sup>214</sup> Quintilian demonstrates this when he criticises those encouraging small children to be precocious:

gaudemus, si quid licentius dixerint: verba ne Alexandrinis  
quidem permittenda deliciis risu et osculo excipimus.

We rejoice if they say something over-free (*licentius*), and words  
which we should not tolerate from the lips even of a favourite

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<sup>212</sup> *Oxford Latin Dictionary*.

<sup>213</sup> Freudenburg 2001: 3-4.

<sup>214</sup> *Oxford Latin Dictionary*.



Alexandrian slave (*Alexandrinus delicias*) are greeted with laughter and a kiss.<sup>215</sup>

However, there appears to be potential for some confusion between whether someone was demonstrating *libertas* or *licentia*. The Oxford Latin Dictionary definition of *libertas* includes “excessive freedom” and “impertinence”, while the definition of *licentia* includes “freedom”. Wirszubski suggests that the distinction between *libertas* and *licentia* is one of self-control: “*libertas* untempered by moderation degenerates into *licentia*.”<sup>216</sup> Wirszubski sees *licentia* as a failure to conform to the standards expected of a Roman citizen. In this interpretation, *libertas* can only be enjoyed under the law, and if uncontrolled, it becomes indistinguishable from *licentia*.<sup>217</sup> Roller objects that defining *libertas* solely in political terms is too narrow an approach and that it is necessary to explore its broader social implications.<sup>218</sup> He argues that a better understanding of *libertas* can be reached by examining the wider, metaphorical expressions employed to describe it. He looks particularly at examples where the sources discuss exchanges with an emperor, demonstrating that the elite “modelled” the emperor’s relationship with them in terms either of a master addressing a slave, or a father addressing a son.<sup>219</sup> He concludes that *libertas* was a positive but vague term which meant “the (desirable) condition of not being a slave”.<sup>220</sup> Roller’s view is that “people with differing political interests provide differing, and even opposed, metaphorical structuring of political situations in terms of status and thereby attempt to impose different understandings of these political situations.”<sup>221</sup> This means that *libertas* has a static meaning, and only seems to shift.

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<sup>215</sup> Quint. *Inst.* 1.2.7.

<sup>216</sup> Wirszubski 1950: 1-7.

<sup>217</sup> Wirszubski 1950: 7-17.

<sup>218</sup> Roller 2001: 219.

<sup>219</sup> Roller 2001: 213-287.

<sup>220</sup> Roller 2001: 228.

<sup>221</sup> Roller 2001: 228. His conclusion that the metaphor used to describe *libertas* changes rather than the meaning of the word itself remains confusing. The fact that different metaphors may be

These different arguments reveal a real difficulty of interpretation. The contemporary sources suggest that this is not a modern phenomenon, and that distinguishing *libertas* from *licentia* was an active concern for the Roman elite. The elder Seneca characterises the Greek historian Timagenes, who was expelled from Augustus' friendship, as "a man of acid tongue, and over free (*nimis liber*) with it".<sup>222</sup> He also shows that *libertas* taken to excess becomes problematic, when he describes the outspoken orator Titus Labienus:

libertas tanta, ut libertatis nomen excederet, et, quia passim ordines hominesque laniabat, Rabienus vocaretur.

His freedom of speech (*libertas*) was so great that it passed the bounds of freedom and because he savaged all ranks and men alike, he was known as Rabienus.<sup>223</sup>

When *libertas* is taken to such an extent, the implication is surely that "*licentia*" should be applied instead. Tacitus provides further evidence of tension in defining *libertas* and *licentia* when he has Maternus say in the *Dialogus*:

est magna illa et notabilis eloquentia alumna licentiae, quam stulti libertatem vocabant, comes seditionum, effrenati populi incitamentum, sine obsequio, sine severitate, contumax, temeraria, adrogans, quae in bene constitutis civitatibus non oritur.

There is that great and famous oratory which is a foster-child of licence, which foolish men called liberty, an associate of sedition, a goad for the unbridled populace. It owes no allegiance to any.

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used – and understood – would seem rather to imply that *libertas* can change with differing contexts.

<sup>222</sup> Sen. *Controv.* 10.5.22. [homo] acidae linguae et qui nimis liber erat puto quia diu non fecerat. Seneca implies that as an ex-slave, Timagenes was over-compensating in his outspokenness.

<sup>223</sup> Sen. *Controv.* 10.pr.5. N.b. also Hor. *Sat.* 2.8.35-8 where heavy drinkers are too freely abusive – *maledicant liberius*.

Devoid of discipline, it is insulting, offhand and overbearing, and does not flourish in a well-regulated constitution.<sup>224</sup>

Tacitus and Seneca do not perceive a problem with *libertas* or *licentia* in themselves, but in the failure to correctly identify them. This is a dangerous and destabilising misuse of *libertas*, an idea which Tacitus entertains elsewhere.<sup>225</sup> This presentation may be complicated by Tacitus' irony, but for his remarks to make sense, there has to be a believable, underlying possibility that *licentia* may be mistaken for *libertas*. Since the two terms are not absolutes, they are subject to change and renegotiation depending on particular circumstances. There is therefore a risk that a small misjudgement will lead to a remark being misconstrued by its audience. Quintilian makes this explicit:

multum refert etiam quae sit persona suadentis, quia, ante acta vita si inlustris fuit aut clarius genus aut aetas aut fortuna adfert expectationem, providendum est ne quae dicuntur ab eo qui dicit dissentiant. at his contraria summissiorem quendam modum postulant. *nam quae in aliis libertas est, in aliis licentia vocatur, et quibusdam sufficit auctoritas, quosdam ratio ipsa aegre tuetur.*

The personality of the adviser also makes a lot of difference. If his illustrious past, his noble family, his age, or his fortune raises expectations, we must take care that what is said is not out of keeping with the man who says it. The opposite situation requires a humbler tone. *For what is called liberty in some is called licence in others* and while some need nothing but their personal

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<sup>224</sup> Tac. *Dial.* 40.2.

<sup>225</sup> E.g. Tac. *Hist.* 2.10.1, *Agr.* 2.

authority (*auctoritas*), others can barely protect themselves by sound reasoning.<sup>226</sup>

Deciding whether someone is demonstrating *licentia* or *libertas* depends not only on what is said, but upon who is speaking. To add to the confusion, the sources do not present fixed rules, but rather a kaleidoscope of potential variations. This explains why there is such difficulty in defining the terms: employing *libertas* without causing offence depended upon assumptions which were not made explicit. The Roman elite would assimilate these as they matured and took their place as adult members of society. This fluidity is reflected elsewhere, with regard to remarks which are *venustus* (“said with grace and charm”) and *urbanus* (using urbane wit, but not laughable), both of which are approved in the sources.<sup>227</sup> Quintilian paraphrases part of Domitius Marsus’ treatise *De Urbanitate*, which emphasises that the characteristics of urbane wit are elegance, sophistication and the amusement it provides for its audience.<sup>228</sup> However, Quintilian challenges earlier authorities and concludes that *urbanus* is only truly represented through absences: absences of discordance, rusticity, disorder, or of anything foreign in one’s judgement, speech, expression or posture.<sup>229</sup> It is something that is frequently and favourably commented upon, and breaches are criticised.<sup>230</sup> Yet it is so intrinsic and so instinctively recognised by a Roman audience that it is difficult to articulate the concept.

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<sup>226</sup> Quint. *Inst.* 3.8.48 (my emphasis). This idea is widely encountered, for example Quint. *Inst.* 8.5.8: *quis enim ferat puerum aut adolescentulum aut etiam ignobilem si iudicet in dicendo et quodam modo praecipiat?* See also 4.1.6-7.

<sup>227</sup> Quoted Quint. *Inst.* 6.3.17-21. E.g. Tac. *Dial.* 26.5. Petron. *Sat.* 52.7 is a sarcastic usage since Trimalchio falls short through vulgar excess: *cum dixisset Agamemnon: “pauper et dives inimici erant.” ait Trimalchio “quis est pauper?” “urbane” inquit Agamemnon.*

<sup>228</sup> Quint. *Inst.* 6.3.101-122. N.b. Quint. *Inst.* 6.3.18: *venustum esse quod cum gratia quadam et venere dicatur apparet.*

<sup>229</sup> Quint. *Inst.* 6.3.107. For examples about tone see *Inst.* 1.5.9, for dress *Inst.* 11.3.137-44, for rusticity and foreign words *Inst.* 8.1.2, 2. 1, for gestures *Inst.* 11.3.65-136.

<sup>230</sup> For example, Sen. *Controv.* 7.pr.3-4 Albicius indulging in vulgar expressions to ape sophistication; Quint. *Inst.* 8.4.8. Antony vomiting in the forum; Sen. *Controv.* 7.4.7 Pompey scratching his head with one finger.

The Roman elite themselves struggled to express the subtleties of polite speech. It is therefore not surprising that modern scholars find it difficult to reconstruct the protocols of an unfamiliar and historic culture. Rather than imposing a definition where the contemporary sources do not, it would perhaps be wiser to accept that *libertas* is a positive quality – the free speech of a free man. *Licentia* is a negative one, reflecting inappropriate and immoderate speech. These were not absolutely fixed characteristics, because the hierarchical nature of Roman society meant that the status of the speaker impacted upon how his remarks were interpreted, creating the danger that *libertas* might be mistaken for *licentia*.

### 2.3 Overview: the Roman elite and systems of patronage

Elite Roman society consisted of a tiny minority of wealthy male citizens, essentially the equestrian and senatorial class, though there was considerable fluidity between these ranks.<sup>231</sup> Saller argues that the Romans thought that the ideal official and the ideal aristocrat shared the same characteristics. This meant that perceived “good character” was essential to gain office, while the fact of holding the office bestowed proof of someone’s worth, creating a powerful link between social prestige and political influence.<sup>232</sup> Good character depended not upon how someone assessed their own worth, but upon how others judged them. Quintilian suggests harnessing gossip to support a court case because this affected how someone was perceived.<sup>233</sup> Status was accrued in various ways, such as high birth, an illustrious hometown, offices held, wealth, possessions and deportment, but it was not an intrinsic quality. “Honour was mediated through the perceptions of others, and even a superfluity of worthy qualities was of no use unless these qualities were known and approved by other aristocrats.”<sup>234</sup> So for example, when Plutarch or Quintilian counsels the student on how to behave

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<sup>231</sup> For a discussion of how the Roman elite was constituted see Edwards 1993: 12-17; MacMullen 1974: 89-120; Winterling 2009: 17-25.

<sup>232</sup> Saller 1982: 96-121; Lendon 1997: 17-29 presents a similar argument.

<sup>233</sup> Quint. *Inst.* 5.3.

<sup>234</sup> Lendon 1997: 36-9. Lendon assumes the existence of censorship, without discussing the implications.

at a lecture, they are concerned with how his remarks and demeanour will be perceived by the audience.<sup>235</sup> These social judgements affected a young man's career, and failure to follow the appropriate codes of behaviour risked damaging his reputation. It is for this same reason that Quintilian is so concerned that the young orator should behave with due dignity, not pulling faces or making off-colour jokes.<sup>236</sup> Dress, appearance, gesture and tone must always be suitable for maintaining reputation, and although vehemence, passion even, are quite acceptable, at all times dignity must be maintained.<sup>237</sup> The quality of the speaker was judged, as well as the quality of the speech. Prestige and moral reputation reinforced one another and affected how someone's words were received:

plurimum tamen ad omnia momenti est in hoc positum, si vir bonus creditur.

If [the orator] is believed to be a good man (*vir bonus*), this will exercise the strongest consideration at every point of the case.<sup>238</sup>

An elite Roman negotiated social relationships through a network of friends, who acted as brokers for communicating with other people. Plutarch suggests that one of the duties of a true friend is to perform introductions and Pliny's letters show this in practice. For example he recommends Voconius Romanus to Priscus. Romanus' background, literary talents and admiration for Pliny are cited as proof of good character.<sup>239</sup> Lendon argues that the elite negotiated their friendships through a "network of honouring" and that they used praise as a form of "currency" in social interaction.<sup>240</sup> Saller expresses similar ideas, arguing that honours formed part of a system of exchange and influence.<sup>241</sup> Pliny's letters

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<sup>235</sup> E.g. Plut. *On Listening* 13, 15; Quint. *Inst.* 2.2.9-13.

<sup>236</sup> Quint. *Inst.* 6.3.28-30. Cic. *De or.* 2.61-71 expresses very similar concepts.

<sup>237</sup> See for example Quint. *Inst.* 9.2.76-7; 10.1.9.

<sup>238</sup> Quint. *Inst.* 4.1.7.

<sup>239</sup> Plut. *Adulator* 24; Plin. *Ep.* 2.13.

<sup>240</sup> Lendon 1997: 23, 57-100.

<sup>241</sup> Saller 1982: 41, 69.

demonstrate that the Roman elite dealt with “friends” who were *superiores*, *pares* or *inferiores* as well as with lesser clients.<sup>242</sup> There was fine gradation in client–patron relationships, so that every member of the elite could place not only himself, but everyone he spoke with in a hierarchy of relative standing.<sup>243</sup> Transgressors were rebuffed: the elder Seneca describes Julius Caesar awarding equestrian status to the mime Laberius at the games. As Laberius went to sit in the seats assigned to the *equites* the others huddled up so as not to admit him. Cicero went as far as to send a joking message that his seat was too narrow to allow Laberius in.<sup>244</sup>

Edwards discusses elite Roman concepts of immorality, and suggests that vices such as *incontinentia* (lack of self-control, especially in sexual relationships), *mollitia* (effeminacy, luxuriousness), dishonesty and cowardice were perceived as a threat to society. This made them a legitimate target for criticism, which was designed to reinforce social norms and protect the elite as a whole from dangers posed by deviance.<sup>245</sup> This in turn may help to explain why particular speakers are treated in particular ways. For example, Seneca’s description of Titus Labienus shows reluctant admiration for someone who was very poor, very notorious, very hated:

magna autem debet esse eloquentia, quae invitis placeat, et cum  
ingenia favor hominum ostendat, favor alat, quantam vim esse  
oportet, quae inter obstantia erumpat! nemo erat, qui non, cum  
homini omnia obiceret, ingenio multum tribueret.

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<sup>242</sup> E.g. senior friends such as Vestricius Spurrina, *Ep.* 3.1 or Rufus Corellius *Ep.* 9.13, equals such as Tacitus, *Ep.* 1.6, 4.13, 8.7, lesser friends such as Septicius Clarus *Ep.* 1.15 or Suetonius *Ep.* 5.10.

<sup>243</sup> See Saller 1982: 8–14 and 1989 for status in Roman friendships.

<sup>244</sup> Sen, *Controv.* 7.3.9. The text is corrupt, but the sense of the anecdote remains clear.

<sup>245</sup> Edwards 1993. Corbeill 1996 presents a similar argument about invective used with moral force to rebuke alleged deviance. See also Lendon 1997: 40–55 and Langlands 2006: 18–29 for similar concepts.

Great indeed must be the eloquence that pleases even the reluctant; and since it is the favour of men that marks out genius, their favour that nourishes it, how great must be the force that can burst through all obstacles to its course! There was no one who did not grant much to the talent, while accusing the man of every crime.<sup>246</sup>

Seneca's evaluation is concerned not with Labienus' qualities, but with how others judged them. This separation of Labienus' talent from his moral worth is unusual.<sup>247</sup> More commonly an explicit link is made between someone's good conduct and their moral attitude. For example, Pliny describes an anonymous person who has spoiled secret ballot papers with jokes and obscenities:

quid hunc putamus domi facere, qui in tanta re tam serio tempore tam scurriliter ludat, qui denique omnino in senatu dicax et urbanus et bellus est?

What conduct may we not consider him capable of at home when he plays such disgraceful jokes in a matter of such importance and at such a serious moment, one who, in short, in the senate of all places is such a smart and elegant and fine fellow?<sup>248</sup>

Pliny assumes that behaviour at home and in public reflect one another and reveal someone's moral character – or its lack.

There is little further evidence about Labienus' reputation, but parallels may be drawn with others who rose from humble birth to great wealth, fame and influence because of their oratorical ability. In the *Dialogus*, Aper describes the fame and fortunes of Eprius Marcellus and Vibius Crispus, and adds:

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<sup>246</sup> Sen. *Controv.* 10. pr.4.6.

<sup>247</sup> Tac. *Dial.* 25.5 provides another instance of this. Messalla criticises Republican orators for revealing mutual hostility in their letters: *non est oratorum vitium, sed hominum*. However, it seems an exceptional attitude. Here Messalla is excusing their conduct.

<sup>248</sup> Plin. *Ep.* 4.25.3.



nam quo sordidius et abiectius nati sunt quoque notabilior  
 paupertas et angustiae rerum nascentes eos circumsteterunt, eo  
 clariora et ad demonstrandam oratoriae eloquentiae utilitatem  
 inlustiora exempla sunt, quod sine commendatione natalium, sine  
 substantia facultatum, neuter moribus egregius, alter habitu  
 quoque corporis contemptus, per multos iam annos potentissimi  
 sunt civitatis ac, donec libuit, principes fori, nunc principes in  
 Caesaris amicitia agunt feruntque cuncta atque ab ipso principe  
 cum quadam reverentia diliguntur.

The lower and meaner their birth, the more notorious the poverty  
 and the straitened means amid which their life began, the more  
 famous and brilliant are they as examples to show the efficacy of  
 an orator's eloquence. Without the recommendation of birth,  
 without the support of riches, neither of the two distinguished for  
 virtue, one even despised for the appearance of his person, they  
 have now for many years been the most powerful men in the state,  
 and, as long as it suited them, they were the leaders in the courts.  
 At this moment, as leading men in the emperor's friendship they  
 carry all before them, and even the leading man himself of the  
 State esteems and almost reverences them.<sup>249</sup>

This is not to be taken at face value, since Aper is arguing for the advantages of  
 an oratorical career, and demonstrating its practical rewards. Mayer notes that the  
 strong language of *sordidus* and *abiectus* may simply mean that they are *novi*  
*homines* and draws parallels with Tacitus' observations on Cassius Severus'  
*sordida origo* and Juvenal's description of a good orator of low birth.<sup>250</sup>  
 However, behind this, the reader may still detect Tacitus' disapproval of Eprius

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<sup>249</sup> Tac. *Dial.* 8.1-3, quoted 3.

<sup>250</sup> Mayer 2001: 109-112 referencing Tac. *Ann.* 4.21.3 and Juv. 8.47-9.

Marcellus, and Mayer finds the phrase *neuter moribus egregius* “damning”.<sup>251</sup> This is because it undercuts Cato’s maxim that an orator should be *vir bonus dicendi peritus*.<sup>252</sup> Aper’s remarks emphasise that disadvantages of birth, character and appearances may be mitigated by material success and political influence, but they are not forgotten. Perceived character remained of the utmost importance for forming the elite’s judgement and oratorical talent alone is not enough.

This puts Labienus in a difficult position: he lacks moral authority because others have a poor opinion of him. Seneca reveals this when he criticises him for only declaiming in private. Seneca claims that this was then the usual custom, but adds that Labienus himself considered public performances shameful and boastful.<sup>253</sup> This is not in itself surprising, since the Roman elite distinguished performances before an invited audience from less prestigious theatrical performances. This was particularly the case when reading poetry.<sup>254</sup> However, this is not the problem here, as Seneca continues:

adfectabat enim censorium supercilium, cum alius animo esset.

For he pretended to the severity of the censor, though his character was quite other.<sup>255</sup>

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<sup>251</sup> E.g. Tac. *Ann.* 16.21-29 describes Eprius Marcellus persuading Nero to allow Thrasea Paetus and Barea Soranus to be charged with *maiestas*, then terrorising the senate, and cannot be anything other than hostile.

<sup>252</sup> Mayer 2001: 112 cross references this with Plin. *Ep.* 4.7.5 where Pliny describes Regulus as *vir malus dicendi imperitus*. The importance of the orator’s good character will be discussed more fully in section 2.5.1.

<sup>253</sup> Sen. *Controv.* 10. pr.4.

<sup>254</sup> For the development of *recitatio*, see for example Markus 2000. She summarises ancient attitudes and modern theories, emphasising the distinction between formal *recitatio* and informal performance. Habinek 1998: 103-121 discusses “writing as social performance” and argues that the tension between writing and performance gave performance prestige, so that recitation enhanced elite status.

<sup>255</sup> Sen. *Controv.* 10. pr.4.

This reveals an unexpected charge: hypocrisy. Labienus was pretending to the “good” elite qualities of modesty and decorum, but the judgement of his peers did not accord with his own. A further anecdote reinforces the fragility of his social standing: when Labienus was reciting his history, he rolled up part of the scroll, refusing to have it read until after his death. Seneca is appalled:

quanta in illis libertas fuit, quam etiam Labienus extimuit.

How great must have been their outspokenness if even Labienus was frightened of it!<sup>256</sup>

However, although Labienus avoids giving offence by appearing to self-censor the work, his obviousness underlines rather than diminishes the problem and emphasises his non-conformity. That this was maladroit is shown by another account of how such self-censorship should have been handled:

recitaverat quidam verissimum librum, partemque eius in alium diem reservaverat. ecce amici cuiusdam orantes obsecrantesque, ne reliqua recitaret. ... et ille quidem praestitit quod rogabatur — sinebat fides — liber tamen ut factum ipsum manet manebit legeturque semper, tanto magis quia non statim. incitantur enim homines ad noscenda quae differuntur.

Someone had been reciting a most truthful account, and had held back part of it for another time. Would you believe it, but friends of a certain individual came begging and pleading with him not to read out the rest... The performer granted the request, as his good faith allowed, but the written word, like the events themselves, remains and will remain to be read for all time and all the more

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<sup>256</sup> Sen. *Controv.* 10. pr.8. Note that an invited audience are admitted to this reading.

for not being read there and then; for men are roused to discover facts reserved for the future.<sup>257</sup>

The differences are striking. Pliny does not name and shame the “certain individual” or his friends (although we may presume their identities were generally known). He describes the account as truthful and the initial delay is due to time constraints, not fear of giving offence. It is suppressed because of graceful capitulation after the culprit’s friends intervene, showing the network of friendship and obligation that underpins elite society. Pliny’s final point is laboured: this is not self-censorship because the written word survives. It will be sought out, not for motives of vulgar curiosity, but because people want to know the truth.

There is no indication that friends affected Labienus’ decision to omit his material. This isolation is striking and Titus Labienus emerges as someone who does not fit in with or follow the rules of elite communication. His background and behaviour do not conform to the expected standards and his attempts to demonstrate good character are judged to be pretence. As a result, he lacks moral authority. His case demonstrates how far the bad opinion of the elite was to be feared and avoided, since a good reputation reflected through praise was essential for social success. These unwritten rules inform elite communication and create a situation where insult threatens reputation and damages social status.

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<sup>257</sup> Plin. *Ep.* 9.27. The episode raises a query over what was considered acceptable for reading “in public”, but there is not enough evidence to draw useful conclusions. There may also be a question over Pliny’s particular sensibilities, as he elsewhere expresses reluctance to record what he finds disgraceful, e.g. at *Ep.* 6.5.5 *noli referre quae dici ab ipsis moleste tuli*. None the less, Pliny clearly expects his audience to understand the episode in 9.27 demonstrates networks of friendship and attitudes to censorship.

## 2.4 Obscenity

### 2.4.1 Conflicting evidence and attitudes

Roman attitudes to obscenity are difficult to decipher. Cicero has Antonius condemn indecent remarks (*obscenitas*) as “not only degrading to a public speaker, but hardly sufferable at a gentlemen’s dinner party”.<sup>258</sup> Quintilian and Plutarch show that these views continued into the principate, while the younger Seneca believes that indecent language brought on an involuntary blush of shame.<sup>259</sup> This is a motif that recurs: Domitian’s ruddy complexion was regarded as a mark of his shamelessness, while modest blushes revealed innate decency of character.<sup>260</sup> Cicero, Quintilian and the elder Seneca all advise great care in approaching obscene topics. Quintilian advises avoiding them altogether and if this is not possible, using a periphrasis.<sup>261</sup>

On the other hand, obscenity and abuse occurred as part of the ritual at weddings, funerals or triumphal processions. Obscene elements – sexual and scatological themes – occur in Latin literature, especially satire and epigram. Writing epigram was a diversion enjoyed by the most eminent men. Augustus not only had Greek epigrammatists among his household, but could extemporise obscene verses that capped their best efforts.<sup>262</sup> Anecdotes appear in the historical sources, such as Suetonius’ account of the Roman elite racing from a public lavatory in response to Lucan’s scatological joke at Nero’s expense.<sup>263</sup> When Quintilian disapproves of encouraging small children to use indecent language, these children are repeating obscenities heard in their homes.<sup>264</sup> There is also evidence of insult

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<sup>258</sup> Cic. *De or.* 2.61, 252.

<sup>259</sup> Sen. *De Ira* 2.2.1.

<sup>260</sup> E.g. Tac. *Agr.* 45; Sen. *Ep.* 11.3, Plin. *Ep.* 5.17.3.

<sup>261</sup> Quint. *Inst.* 6.3.47, 8.2.1, 10.1.9.

<sup>262</sup> Macrobi. *Sat.* 2.4.31.

<sup>263</sup> Suet. *Vita Luc.*

<sup>264</sup> Quint. *Inst.* 1.2.7-8.

functioning as a “game” where two people capped each other’s outrageous remarks.<sup>265</sup>

How should these apparent contradictions in attitudes be explained? It is difficult to reconstruct an individual’s sense of humour and tolerance at such a distance, but there is some evidence that attitudes were less forbearing under the Flavians.<sup>266</sup> Ummidia Quadratilla, in her late seventies, was still enjoying the gaming and pantomime performances which were fashionable when she was a young woman, but considered neither diversion suitable for her grandson.<sup>267</sup> Differing personal sensitivities to obscenity may also be reflected in poems written for patrons. For example, Pliny quotes a poem in which Martial praises his devotion to study during the day. It warns the visitor to approach Pliny’s house only in the evening, when it is time for even Catos to relax.<sup>268</sup> Pliny’s pride is palpable – he is able to “remember” the poem and quote it to Paternus – showing that Martial struck the right tone and pleased this particular patron.

Confusion about the origin of the word *obscenus* among the Romans themselves may perhaps have arisen because obscene material was performed on stage at the Floralia, and in the Atellan farces, which were Oscan in origin. Varro makes a direct connection between *obscenus* and *scaena* (stage) and Pompos Festus suggests a link with the Oscans.<sup>269</sup> However, as Richlin points out, Festus later contradicts himself. Noting that Verrius had made the same association between *obscenus* and the Oscans, he adds:

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<sup>265</sup> Hor. *Sat.* 1.7, 1.5. 51-70.

<sup>266</sup> The role of individual versus community values is far from clear. E.g. Corbeill 1996: 174-6 on humour and individual status; Langlands 2006: 32 argues for a growth in “personal moral development” in the first century AD. See Garthwaite 1990 on moral reforms under Domitian.

<sup>267</sup> Plin. *Ep.* 7.24.

<sup>268</sup> Plin. *Ep.* 3.21. Martial was rewarded with financial support for his journey home to Spain. Henderson 2001 argues that Pliny “beats Martial at his own game” by quoting only part of the poem and the omission is significant.

<sup>269</sup> Varro 9.96 *obscaenum* dicitur ab *scaena*: iam, ut Graeci et Accius scribit *scena*(m). *obscaenum* is derived from *scaena*: the Greeks and Accius write it as *scena*. Pompeius Festus 204 L: etiam verba impudentia elata apellantur obscena, quia frequentissimus fuit usus Oscis libidinum spurcarum. Also words uttered in shamelessness are called “obscene” because the use of foul lusts was very common among the Oscans.

quod verum esse non satis adducor, cum apud antiquos omnis fere obscena dicta sint, quae mali ominis habebantur.<sup>270</sup>

But I am not quite convinced that this is true, since among almost all the ancients things were said to be “obscene” that were considered of ill-omen.

In fact, *obscenus* is commonly found with the meaning of “boding ill, unpropitious, ill-omened”.<sup>271</sup> Richlin therefore argues that this should be understood as the primary meaning of *obscenus*. She believes that it refers to things considered “of ill-omen and that it applies to sexual and scatological material along with other things perceived as unclean, and that this meaning extends into the world of literature ... . Fittingly, the obscene area has its own bards and its own poetry”.<sup>272</sup>

This idea that obscene material stands apart and is appropriate for certain people at certain times sits well with the evidence of poets echoing the language of religious ceremony when they warn their audience to keep away if they are not suited to the themes of the poem.<sup>273</sup> Obscene material was accepted at some celebrations, and it is generally agreed that Seneca’s *Apocolocyntosis* was composed for recital at the Saturnalia festival of 54 and preserved because of the imperial connection.<sup>274</sup> Nauta believes that some of Martial’s poetry is similar in kind. It was normal for a client to give a Saturnalia gift to his patron and books, self-composed or not, made particularly suitable presents.<sup>275</sup> Nauta argues for close links between behaviour at the Saturnalia, and at a dinner party

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<sup>270</sup> Pompeius Festus 218 L; Richlin 1992: 274.

<sup>271</sup> *Oxford Latin Dictionary* quoting e.g. Catul. 68.99, Liv. 31.12.6, Verg. G. 1.470, Suet. *Galb.* 4.2. The link Varro suggests between *scaena* and *obscaena* is rejected, with the root *obscaen-* described as “dubious.” For detailed studies of Roman concepts of obscenity, see for example Richlin 1992; Corbeill 1996.

<sup>272</sup> Richlin 1992: 8-13.

<sup>273</sup> Richlin 1992: 8 giving the example of Ov. *Ars Am.* 1.25-34 using “the language of sacrifice”. Similarly, Hor. *Carm.* 3.1.1-4.

<sup>274</sup> Nauta 1987.

<sup>275</sup> Nauta 2002: 186-7.

(*convivium*). He suggests that the Saturnalia was an extended and radicalised *convivium* and that both shared features such as rules for drinking and the appointment of a *rex* to impose forfeits on the diners. In this interpretation, abusive and obscene poetry is allowed in the context of permitted licence. Saturnalia and *convivia* will be further discussed in the next section, and both will be referred to as “festival occasions”.<sup>276</sup>

Richlin makes the further suggestion that there is a link between the unclean, ill-omen and obscenity. Roman reluctance to use explicitly obscene language arises because it was perceived to “stain” the speaker’s mouth by association.<sup>277</sup> This dislike of something considered “dirty” or “nasty” pervades the sources – for example Martial’s jokes about unpleasant kisses or perfume used to camouflage unpleasant odours are forceful enough for one author to describe him as “obsessed” with “sexual smells, disgusting genitalia and ... physical deformities in both sexes”.<sup>278</sup> It also explains why the evidence about obscenity is so hard to interpret: this preoccupation with what is clean and unclean extends beyond clearly defined, rational boundaries into something far more primitive, instinctive and uncontrollable. Obscene material will not necessarily lead to a fully rational response and while variation in an individual’s reaction will, of course, be in accordance with the wider social conventions, this too helps to explain seeming anomalies in what was considered offensive and the response to it.

## 2.4.2 Festival and permitted licence

Festivals with licensed free speech and reversal (or “inversion”) of social roles are common to many cultures.<sup>279</sup> Mikhail Bakhtin believed that festival occasions – which he calls carnival – gave rise to a special kind of communication because normal taboos and hierarchical distinctions were ignored

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<sup>276</sup> Nauta 2002: 167-175.

<sup>277</sup> Richlin 1992: 18-31. See also Corbeill 1996: 99-127 and Edwards 1993: 78-92; Sullivan 1991: 185-210 discusses Martial’s sexual attitudes.

<sup>278</sup> Sullivan 1991: 209.

<sup>279</sup> Bernstein 1992: 36-8.



or overturned.<sup>280</sup> This has common ground with anthropological theories, especially those pioneered by Victor Turner. Turner suggests that during festival occasions and rites of passage hierarchies are not functioning in their usual way.<sup>281</sup> As a result, people speak more openly. Turner sees this as an ongoing and essential process for maintaining social norms and hierarchies in everyday life. There are certainly elements in Roman society that fit these broader anthropological models. When obscenity and abuse occur at weddings, funerals or triumphal processions, this is usually interpreted as licensed, aggressive, often humorous, and functioning as a method of reinforcing norms of morality and behaviour.<sup>282</sup> Social inversion formed part of the Saturnalia festival, celebrated in mid December. However, Bakhtin's theory of a direct link between Roman Saturnalia and medieval carnival is now discredited, and there are further problems, since he makes assertions without evidence. The political context of his work must be remembered, since his aim was to criticise Stalinism.<sup>283</sup>

Bakhtin and other commentators celebrate festival occasions as opportunities for renewal and revival, but this should not blind us to the particular concerns that festival occasions caused for members of the Roman elite.<sup>284</sup> These focus on the potential for damage to social status. The sources show that abusive language could be expected at *convivia* from slaves, dinner-party wits (*scurrae*), lewd

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<sup>280</sup> Bakhtin 1969.

<sup>281</sup> Turner 1969, 1974. Turner's theories are based on his study of the Ndembu in Zambia and exert considerable influence on anthropological studies of modern societies.

<sup>282</sup> A detailed survey of the role of obscenities at times of social disruption is beyond the scope of this chapter. For discussion of fertility rites and the apotropaic function of abusive and obscene language in Roman society see for example Corbeill 1996: 68 on triumphs; Hersch 2010: 151-3 on *Fescennini versus* at weddings; Sumi 2002 on the role of mimes at funerals, although his argument suffers from the paucity of evidence from the first century AD.

<sup>283</sup> Bakhtin 1969: 1-58. See e.g. Nauta 2002: 180, Bernstein 1992: 35 for lack of continuity between Saturnalia and later carnival. Stallybrass and White 1986: 9-20; Nauta 2002: 181-4 on Stalinism and Bakhtin's theories.

<sup>284</sup> Bernstein 1992: 36-54 deals sensibly with the problem of cruelty and anarchy within the carnival context, and points out the danger of its temporary nature for those who used their licence for insult too freely.

dancers (*cinaedi*) and buffoons (*moriones*).<sup>285</sup> There are also examples of guests who courted popularity by insulting others.<sup>286</sup> Insult need not be verbal, since the host might invite someone in order to make them look foolish.<sup>287</sup> Suetonius' account of Claudius' experiences before he became emperor shows how insult might function at a dinner party:

nam et si paulo serius ad praedictam cenae horam occurrisset, non nisi aegre et circuito demum triclinio recipiebatur, et quotiens post cibum addormisceret, quod ei fere accidebat, olearum aut palmularum ossibus incessebatur, interdum ferula flagrove velut per ludum excitabatur a copreis. solebant et manibus stertentis socci induci, ut repente expergefactus faciem sibimet confricaret.

If he came to dinner a little after the appointed time, he took his place with difficulty and only after making the round of the dining-room. Whenever he went to sleep after dinner, which was a habit of his, he was pelted with the stones of olives and dates, and sometimes he was awakened by the jesters with a whip or cane, in pretended sport. They used also to put slippers on his hands as he lay snoring, so that when he was suddenly aroused he might rub his face with them.<sup>288</sup>

This makes uncomfortable reading for a modern audience, who may find they agree with Epictetus when he asks whether it is worth enduring a meal for the prospect of advancement.<sup>289</sup> In fact, Epictetus is disingenuous, because the Roman elite had little choice about whether they should attend *convivia*. For those, like Claudius, who were invited to an imperial banquet, refusal was not an

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<sup>285</sup> See e.g. Peachin 2001, Damon 1998 and Corbett 1986, though Corbett should be approached with caution. Cf. Rudd 1987.

<sup>286</sup> Juv. 9.10; Plut. *Quaest. Conv.* 1.1, 2.1.

<sup>287</sup> E.g. Plin. *Ep.* 2.6; Mart. 9.2; Juv. 5 24-173.

<sup>288</sup> Suet. *Claud.* 8.

<sup>289</sup> Epictetus, *Manual* 25.4-5.

option. *Convivia* provided essential opportunities for social and political advancement. Suetonius describes Tiberius appointing a young man of obscure family to the quaestorship for drinking an amphora of wine at a *convivium*. This is presented as a discreditable example, but shows the potential for impressing patrons.<sup>290</sup>

*Convivia* had considerable impact upon determining relative social status. This created anxiety over whether guests would be treated appropriately, and fear that status would be diminished. For example, the author of the *Laus Pisonis* praises his patron's behaviour towards his clients:

nulla superborum patiuntur dicta iocorum,  
 nullius subitos affert iniuria risus:  
 unus amicitiae summos tenor ambit et imos.  
 rara domus tenuem non aspernatur amicum  
 raraque non humilem calcat fastosa clientem.

They do not wince under any witticisms of overbearing jests: no man's grievance furnishes material for sudden laughter. A uniform tenor of friendship encompasses highest and lowest. Rare the house that does not scorn a needy friend; rare the house that does not trample contemptuously on a humble dependant.<sup>291</sup>

In contrast, other patrons treat even the most moral clients with contempt:

nec quisquam vero pretium largitur amico,  
 quem regat ex aequo vicibusque regatur ab illo,  
 sed miserum parva stipe focilat, ut pudibundos

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<sup>290</sup> Suet. *Tib.* 42.2.

<sup>291</sup> *Laus Pisonis* 115-119.

exercere sales inter convivia possit.  
 ista procul labes, procul haec fortuna refugit,  
 Piso, tuam, venerande, domum: tu mitis et acri  
 asperitate carens positoque per omnia fastu  
 inter ut aequales unus numeraris amicos,  
 obsequiumque doces et amorem quaeris amando.

No one confers largess on a true friend in order to guide him on an equal footing and in turn be guided by him, but one hires the wretched man for a trumpery wage to have the power of practising shameful witticisms at the festal board. Far has such a disgrace, far has a plight of this sort fled, worshipful Piso, from your house. In your gentleness and freedom from sharp asperity, laying aside pride everywhere, you are reckoned as but one among your friendly peers: you teach obedience, as you court love by loving.<sup>292</sup>

This panegyric not only praises its subject, it offers a programme for others to follow. Piso is presented as a true gentleman, although it should be noted that some are still more equal than others and his guests are expected to learn obedience (*obsequium*) and love (*amor*). Similar disquiet is reflected when Juvenal refers disparagingly to the famous *scurrae* Gabba and Sarmentus, who endured miseries (*iniquae*) in return for a meal. Martial has similar themes of the indignities required for a dinner.<sup>293</sup> Quintilian warns that the humour of the

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<sup>292</sup> *Laus Pisonis* 124-132.

<sup>293</sup> Juv. 5.1-5; Mart. 10.10. See also Hor. *Sat.* 1.5 51-70; Quint. *Inst* 11.1.29-30.

*scurra* is often turned back on himself, while Plutarch deliberates over what mockery is suitable for the company.<sup>294</sup>

Food and entertainment were sometimes provided according to rank, creating further pitfalls in regard to status. Pliny disassociates himself from the practice, but the reader is left in no doubt that Pliny was among those honoured with the best.<sup>295</sup> He uses the opportunity to point a moral when he writes to Junius Avitus. The man sitting next to him had enquired if he approved of the practice and was astonished to learn that Pliny provided the same fare for all his guests. This is not, however, a matter of fair treatment, because the point of the story is his frugality. He keeps the cost moderate by drinking the same wine as his freedmen rather than offering them the best vintages. The moral is that Junius Avitus must take care to avoid the appearance of extravagance:

quorsus haec? ne tibi, optimae indolis iuveni, quorundam in  
mensa luxuria specie frugalitatis imponat. convenit autem amori  
in te meo, quotiens tale aliquid inciderit, sub exemplo  
praemonere, quid debeas fugere. igitur memento nihil magis esse  
vitandum quam istam luxuriae et sordium novam societatem; quae  
cum sint turpissima discreta ac separata, turpius iunguntur.

Why am I telling you this? So that the luxury disguised as economy found on certain people's tables does not deceive a young man of great promise like yourself. Whenever I meet with such a situation, my affection for you prompts me to quote it as a warning example of what to avoid. Remember then that nothing is to be more shunned than this novel association of extravagance

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<sup>294</sup> Plut. *Quaest. Conv.* 1.1, 2.1. Quint. *Inst.* 6.3.82.

<sup>295</sup> Plin. Ep. 2.6. Gibson and Morello 2012: 158-9 note that Pliny is "re-focusing a hackneyed topic" (*luxuria*) to explore the theme of amicable hospitality and that his concern is with how people are treated rather than genuine "equality."

and meanness, vices which are bad enough when single and separate but worse when found together.<sup>296</sup>

He omits to mention that this practice may have had its own dangers, though he is certainly aware of them. A letter to Calestius Tito advises on the importance of maintaining proper distinctions when dealing with provincials, and praises him for “winning the affection of the humble without losing the regard of their superiors”.<sup>297</sup> In the context of *convivia*, failure to make social distinctions created the risk that one’s more senior guests might take umbrage.<sup>298</sup> Rather than engaging with this problem directly, Pliny sets out his position in a letter to Genitor. This ostensibly reproves his disapproval of a lavish banquet:

equidem nihil tale habeo, habentes tamen fero. cur ergo non habeo? quia nequaquam me ut inexpectatum festivumve delectat, si quid molle a cinaedo, petulans a scurra, stultum a morione profertur.

I myself don’t lay on anything of the sort, but I bear with those who do. Why do I not have them? Because I derive absolutely no unexpected or gratifying pleasure from the effeminacy of a dancer, the wantonness of a wit or the stupidity of a clown.<sup>299</sup>

Pliny goes on to say that he is sure others find his own dinner-party entertainments of reader, lyre-player or comic actor equally unappealing. However, there is a strong sense that only the immoral will really think so and the terms he uses for the entertainment offered by the dancer (*mollis*), wit (*petulans*) and the clown (*stultus*) are pejorative ones. The show of tolerance is a

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<sup>296</sup> Plin. Ep. 2.6.6-7.

<sup>297</sup> Plin. Ep. 9.5, quoted 9.5.1 egregie facis (inquiro enim) et persevera, quod iustitiam tuam provincialibus multa humanitate commendas; cuius praecipua pars est honestissimum quemque complecti, atque ita a minoribus amari, ut simul a principibus diligere.

<sup>298</sup> See D’Arms 1990 for lack of equality at *convivia* and the importance of social rank and establishing hierarchies.

<sup>299</sup> Plin. Ep. 9.17.

mere veneer and Pliny's strategy is to present the issue as one of moral choice. In this way, he opts out of the competition for social status, without acknowledging it. In an earlier letter to Septicius Clarus Pliny teases him for accepting an invitation to a fancier party.<sup>300</sup> He contrasts the food and entertainment he himself would have offered and adds:

potes apparatius cenare apud multos, nusquam hilarius simplicius incautius.

You can dine in many houses on more elaborate fare, but nowhere more genially, innocently, and unguardedly.<sup>301</sup>

Once again, Pliny avoids engaging directly with issues of status. Emphasising the unpretentious nature of his own dinners allows him to present them as friendly occasions which stand outside the competition for status.

One of the most serious charges levelled against Bakhtin is his failure to engage with issues of control and licence, since the carnival occasions that Bakhtin describes are those permitted by the authorities. They therefore represent a form of controlled licence, often described as a "safety valve", rather than genuine social inversion. This is a particular issue for Roman festival occasions, which show a striking lack of spontaneity. Abusive and obscene elements may be appropriate to the festival, but they are governed by strict conventions. This could be extended as far as a formal "code of conduct" for the guests to follow.<sup>302</sup> Peachin observes that "verbal abuse could appropriately be cast at

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<sup>300</sup> Plin. *Ep.* 1.15. The theme of a good friend making a good party is a literary trope, c.f. Catull. 13.

<sup>301</sup> Plin. *Ep.* 1.15.4.

<sup>302</sup> Nauta 2002: 172. ILS 7212 col.11 II 26-28 lists rules for *convivia* of the burial club at Lanuvium, where abuse was fined and insulting the master of ceremonies carried a premium. See Peachin 2001: 136-7. Clarke 2007: 7-9 rejects the idea that humour at "public" occasions reinforces existing power structures, but e.g. 83-8 argues visual humour was used to express hostility against the elite by the non-elite. It is not clear that this "class warfare" interpretation reflects contemporary experience of social relationships. Non-elite attitudes will be discussed in chapter 5. Scott 1990: 184-7 dismisses the idea of carnival as a "safety valve" but his discussion

anyone while physical abuse was generally reserved for those of lower status. The etiquette that appears to have been operative in the *triclinium* ... seems ... to reflect rules of conduct observed elsewhere and at other times”.<sup>303</sup> Rimell, perhaps more perceptively, suggests that the “blurring of norms and rules during the Saturnalia might make it *more* difficult to judge the point to which those limits have stretched, with potentially dangerous consequences”.<sup>304</sup> The problem is not simply that ordinary rules have been overturned, but that they have been replaced, making festival etiquette opaque and easy to misinterpret. Tacitus’ account of the Saturnalia celebrations in AD 54, when Nero attempted to humiliate his step-brother, demonstrates both limits to licence and the potential for malice:

festis Saturno diebus inter alia aequalium ludicra regnum lusu  
sortientium evenerat ea sors Neroni. igitur ceteris diversa nec  
ruborem adlatura: ubi Britannico iussit exsurgeret progressusque  
in medium cantum aliquem inciperet, inrisum ex eo sperans pueri  
sobrios quoque convictus, nedum temulentos ignorantis, ille  
constanter exorsus.

During the festivities of the Saturnalia, while his peers in age were varying their diversions by throwing dice for a king, the lot had fallen upon Nero. On the others he imposed various orders, not likely to put them to the blush: but, when he commanded Britannicus to rise, advance into the centre, and strike up a song — this, in the hope of turning into derision a boy who knew little of sober, much less of drunken, society — his victim firmly began a poem hinting at his expulsion from his father’s house and throne. His bearing awoke a pity the more obvious that night and

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uses early modern examples rather than addressing the specific circumstances of early imperial Rome.

<sup>303</sup> Peachin 2001: 139-40.

<sup>304</sup> Rimell 2008: 143.



revelry had banished dissimulation. Nero, once aware of the feeling aroused, redoubled his hatred.<sup>305</sup>

Britannicus adroitly turns an intended insult back upon its perpetrator. However, this was a situation with implications beyond the immediate Saturnalian setting because of the relative circumstances of the two young men. Britannicus might have been wiser to allow the *rex* his joke.

There are other expressions of anxiety about status at the Saturnalia. Pliny writes of a particular suite of rooms at his Laurentine estate:

in hanc ego diaetam cum me recepi, abesse mihi etiam a villa mea videor, magnamque eius voluptatem praecipue Saturnalibus capio, cum reliqua pars tecti licentia dierum festisque clamoribus personat; nam nec ipse meorum lusibus nec illi studiis meis obstrepunt.

I regard myself as being away even from my house, and I take great pleasure in it, especially at the Saturnalia, when through the rest of the house the roof resounds with the uninhibited behaviour and the festive shouts of the holidays; for then I do not impede the games of my household, and they do not interrupt my studies.<sup>306</sup>

Pliny is willing to indulge his household during their holiday, but he does not want to participate. Seneca shows a similar attitude, writing that there is no real difference between the Saturnalia and an ordinary working day. He discusses the correct attitude to take to the festival:

si te hic haberem, libenter tecum conferrem quid existimares esse faciendum: utrum nihil ex cotidiana consuetudine movendum an,

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<sup>305</sup> Tac. *Ann.* 13.15.1. Whether or not the story is factually accurate, it illustrates contemporary attitudes to Saturnalian etiquette.

<sup>306</sup> Plin. *Ep.* 2.17.24.

ne dissidere videremur cum publicis moribus, et hilarius  
cenandum et exuendam togam. .... si te bene novi, arbitri partibus  
functus nec per omnia nos similes esse pilleatae turbae voluisses  
nec per omnia dissimiles.

Should we make no alteration in our daily habits, or should we  
take off our togas ... and have dinner parties with a note of gaiety  
about them, to avoid giving the impression that we disagree with  
the ways of those around us? If I know you as well as I think I do  
... you would say that we should be neither like nor unlike the  
festive-hatted crowd.<sup>307</sup>

Seneca, unlike Pliny, decides that the best course is to pursue a happy medium.  
Pliny presents his concerns as reluctance to interrupt his studies, since he is too  
busily occupied to indulge in *otium*. Seneca's concerns are philosophical, but the  
problem is the same for both men. They do not want to appear to criticise the  
festival, but nor do they want to celebrate it fully. The difficulty is particularly  
acute because of customs regarding social inversion. The Saturnalia festival was  
temporary, while the danger of rebellious slaves was a perennial concern for the  
Roman elite.<sup>308</sup> The temporary, limited nature of festival added to the stresses  
that surround the occasion. Neither Pliny nor his slaves are able to forget their  
relative status despite the holiday. No wonder festival occasions were controlled  
to limit upset to social relationships after the celebrations ended.<sup>309</sup>

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<sup>307</sup> Sen. *Ep.* 18.2-3.

<sup>308</sup> Bernstein 1992: 20, 38. For elite concern over unruly slaves and freedmen see for example Tac. *Ann.* 13 26-7; 14.42-45.

<sup>309</sup> D'Arms 1991 176-81.

## 2.5 Humour and ridicule

Even the contemporary Roman audience were not always sure when something was funny rather than simply abusive.<sup>310</sup> As Quintilian sees it, it is a matter of common sense that jokes are problematic.

neque enim ab ullo satis explicari puto, ... unde risus lacissetur ...  
praeterea non una ratione moveri solet: neque enim acute tantum  
ac venuste, sed stulte, iracunde, timide dicta aut facta ridentur,  
ideoque anceps eius rei ratio est, quod a derisu non procul abest  
risus ... quae cum in aliis demonstrantur, urbanitas, cum in ipsos  
dicentes recidunt, stultitia vocatur.

I do not think that anybody can give an adequate explanation ... of  
the cause of laughter... moreover there is great variety in the  
things which raise a laugh, since we laugh not merely at those  
words or actions which are smart or witty but also at those which  
reveal folly, anger or fear. Consequently, the cause of laughter is  
uncertain, since laughter is never far removed from derision. ...  
when we point to such a blemish in others, the result is known as  
wit, it is called folly when the same jest is turned against  
ourselves.<sup>311</sup>

Jokes reveal qualities which the victim wishes to keep hidden, while making  
someone look foolish may invite reprisals. As Halliwell observes, “[I]n a society  
with a strong sense of shame and social position, [humour] is a powerful means

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<sup>310</sup> This chapter is selective in its approach to the discussion of humour and laughter, in line with the purposes of the study as a whole. Detailed discussions of Roman theories already exist and need not be repeated here. See for example Grant 1924 who investigates Classical views on humour and rhetoric in detail. Plaza 2006: 6-22 provides an overview of modern sociological theories and surveys recent modern works on Roman humour. Clarke 2007: 3-9 has a similar survey.

<sup>311</sup> Quint. *Inst.* 6.3.7-8.

of conveying dishonour and of damaging the status inherent in a reputation”.<sup>312</sup>

Concerns over status may be observed when Suetonius reports a failure in Domitian’s sense of humour:

Aelium Lamiam ob suspiciosos quidem, verum et veteres et  
innoxios iocos, quod post abductam uxorem laudanti vocem suam  
“eutacto” dixerat, quodque Tito hortanti se de alterum  
matrimonium responderat: μή καὶ σὺ γαμῆσαι θέλεις;

[Domitian slew] Aelius Lamia for joking remarks, which were  
reflections on him, it is true, but made long before and harmless.  
For when Domitian had taken away Lamia’s wife, the latter  
replied to someone who praised his voice: “I practise continence”;  
and when Titus urged him to marry again, he replied: “Are you  
too looking for a wife?”<sup>313</sup>

The political edge to these quips raises questions about how “harmless” the retorts really were, but Suetonius ignores that aspect. He presents them as jokes which disclosed the realities of the situation and therefore exposed Domitian’s actions to ridicule. There is other evidence for imperial intolerance of ill-timed humour. When someone watching a funeral called upon the corpse to let Augustus know that his legacies were still outstanding, Tiberius executed him so that he could deliver the message directly.<sup>314</sup> Caligula had a notoriously vicious sense of humour, while Domitian was sensitive upon the subject of baldness, and took any jokes about it as a personal insult.<sup>315</sup> Plass suggests that not all such anecdotes are based in literal truth, but reflect a form of black humour used as a coping mechanism in times of political and personal stress.<sup>316</sup> The stories were

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<sup>312</sup> Halliwell 1991: 285. Halliwell’s study is of Greek society, but his remarks are equally applicable to a Roman context.

<sup>313</sup> Suet. *Dom.* 10.2

<sup>314</sup> Suet. *Tib.* 57.2. The joker is referred to as a *scurra*.

<sup>315</sup> See for example Suet. *Calig.* 27-30, 33; *Dom.* 18.2

<sup>316</sup> Plass 1988: 80-88.

repeated and came to form part of the historical assessment of the emperors concerned. This in itself provides an example of the threat humour poses, since a funny story is memorable and circulates among a wide audience. Some of them may even believe it.<sup>317</sup>

Roman concern over ridicule was not only with physical danger. There was also the risk that it might misfire and expose the instigator himself to disgrace. Quintilian considers the difficulty of controlling the audience's response to a quip: when the ill-favoured Sulpicius Longus described a man trying to prove his free status as having the face of a slave, Domitius Afer retorted, "Is it your profound conviction, Longus, that an ugly man must be a slave?"<sup>318</sup> Quintilian does not need to spell out the audience's reaction or the glee with which this story was repeated. There are other examples where a witty retort discredits the original speaker and Quintilian warns:

ea quae dicet vir bonus omnia salva dignitate ac verecundia dicet:  
nimium enim risus pretium est si probitatis inpendio constat.

A good man will see that everything he says is consistent with his dignity and the respectability of his character; for we pay too dear for the laugh we raise if it is at the cost of our own integrity.<sup>319</sup>

These ideas about respectable and dignified humour are informed by Aristotle's theory of the liberal jest. Grant summarises the evidence and offers a definition: "It is worthy of a gentleman in all respects, for although by its very nature it must ridicule faults and foibles, it ridicules only minor ones and is not directed at friends, the unfortunate or those in high position; it is expressed in refined language; it is not abusive in spirit except when there is a worthy purpose to serve; it observes the proper time and place. Above all it reflects the kindness,

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<sup>317</sup> Plass 1988: 7 notes that a joke that is believed is effectively a lie.

<sup>318</sup> Quint. *Inst.* 6.3.32-3. Quintilian has many examples for appropriate humour in the section.

<sup>319</sup> Quint. *Inst.* 6.3.35.

dignity and refinement of the speaker. The illiberal jest, on the other hand, has the opposite characteristics.”<sup>320</sup>

Humour can be used to defuse threats to one’s status. Suetonius says of Vespasian:

maxime tamen dicacitatem adfectabat in deformibus lucris, ut invidiam aliqua cavillatione dilueret transferretque ad sales.

He particularly resorted to witticisms about his unseemly means of gain, seeking to diminish their odium by some jocose saying and to turn them into a jest.<sup>321</sup>

Vespasian’s jokes alleviate distaste at his money grubbing. Suetonius gives other examples of Vespasian using humour to defuse criticism of his behaviour and background. When the ex-consul Mestrius Florus reminded him that the proper pronunciation was *plaustra* rather than *plostra*, Vespasian greeted him next day as “Flaurus”.<sup>322</sup> This technique was not confined to the emperor. Quintilian preserves an anecdote about the famously witty Domitius Afer. When a client ignored him in the forum, Afer sent a slave to say: “I hope you are obliged to me for not having seen you.”<sup>323</sup> On both occasions, humour is unanswerable. The victim is made to look foolish, but required to laugh along with the audience or seem ungracious and so lose face further.

At first sight, Cassius Severus’ jokes seem similar in tone. When Severus was reproached with being banned from a certain Proculeius’ house, he retorted “do I ever go there?”<sup>324</sup> Yet the sources also preserve the tradition that Cassius Severus’ jokes were problematic. Quintilian condemns Severus, saying that

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<sup>320</sup> Grant 1924: 87. See also Freudenburg 1992: 55-72.

<sup>321</sup> Suet. *Vesp.* 23.1.

<sup>322</sup> Suet. *Vesp.* 22.

<sup>323</sup> Quint. *Inst.* 6.3.93.

<sup>324</sup> Quint. *Inst.* 6.3.79. See also Quint. *Inst.* 6.1.43; 6.3.78.

despite his many talents, he allowed his temper to rule his judgement and his jests often turned against him. The elder Seneca describes his dignity as worthy of a censor, as long as he avoided humour.<sup>325</sup> Perhaps the answer may be found in Tacitus' assessment of Severus:

sordidae originis, maleficae vitae sed orandi validus [vir erat].

Of sordid origin and mischievous life, but a powerful orator.<sup>326</sup>

Tacitus ascribes Severus' relegation to Seriphos in AD 24 to the fact that he had made numerous enemies. It may be that the sources reflect prejudice not about humour in itself, but rather about who makes the jokes. In this interpretation, low status makes someone's *dignitas* fragile so that he cannot "get away with" jokes that another speaker could safely deliver, supported by a network of friendship and patronage that sanctioned his humour. The evidence suggests that the relative status of the joker, his target and his audience impacted upon how humour was received.<sup>327</sup> Humour remained unpredictable and therefore dangerous. Pliny, astute at negotiating social situations, opts out of using humour. He may report a witticism or write that he is sending a long letter about long speeches but he does not joke about his friends.<sup>328</sup>

### 2.5.1 Ridicule, invective and appropriate speech in oratory

Both Quintilian and Cicero are concerned with the humour appropriate for the orator. Quintilian summarises different types of humour – both verbal and physical – and separates polished oratory from country witticisms.<sup>329</sup> An orator

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<sup>325</sup> Quint. *Inst.* 10.1.116-7. Sen. *Contr.* 3. pr.4.

<sup>326</sup> Tac. *Ann.* 4.21.3.

<sup>327</sup> Clarke 2007: 9-11, 119-20 notes the importance of context for interpreting jokes, and that their meaning is not absolute but varies with individual response. Clarke's study is concerned with visual humour, but his point that jokes are received differently depending on who makes them and who forms their audience is relevant here.

<sup>328</sup> Plin. *Ep.* 3.9.3, 1.20.

<sup>329</sup> Quint. *Inst.* 6.3. Grant 1924: 100-31 discusses Greek and Latin terms employed for different kinds of humour.

can use laughter to ingratiate himself with the judge and jury, or ruffle overconfident witnesses, but all laughter remains potentially dangerous.<sup>330</sup> Thus it is best to avoid humour which the judge or jury could interpret as a joke at their expense.<sup>331</sup> The concern underlying this is, once again, one of relative status: orators do not want to behave like *scurrae*. It was important to judge one's tone correctly: Cicero advises that only lesser faults should be ridiculed, while serious ones should be treated gravely.<sup>332</sup>

There are obvious dangers in an aggressive and vitriolic delivery, but these were not new under the principate. Cicero's treatise on oratory has a dramatic date of 91 BC, and he has Antonius advise caution. Even if the defendant and his supporters demand that the opponent's witness be abused (*maledicere*) and cross-examined (*interrogare*), this is unwise:

hic quantum fit mali, si iratum, si non stultum, si non levem  
testem laesis! habet enim et voluntatem nocendi in iracundia et  
vim in ingenio et pondus in vita.

How much harm is done if you fall foul of a witness who has lost his temper and is no fool, and a person of consideration! His anger supplies him with the wish to injure you, his ability with the power to do so and his past record with influence.<sup>333</sup>

Proceed with caution, Cicero advises. He can be seen putting that into practice in the *Pro Caelio*, where his character assassination of Clodia is framed in terms of what her grandfather would have said.<sup>334</sup> Insulting a Roman *matrona* of impeccable lineage could have had serious repercussions. By framing her behaviour in context of the *mos maiorum* – the ancestral customs that were the

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<sup>330</sup> Quint. *Inst.* 5.7.26.

<sup>331</sup> Quint. *Inst.* 6.3.32

<sup>332</sup> Cic. *De or.* 2.58.237.

<sup>333</sup> Cic. *De or.* 2.74.302.

<sup>334</sup> Cic. *Cael.* 33-5. Geffcken 1973: 17-20 on the performance aspects of this section.



foundation of virtuous behaviour – Cicero’s denunciation is subtle enough to seem as if he is speaking out for the common good. The risks of offending the powerful did not diminish during the principate. Quintilian urges the orator not to be abusive for the sake of it: abuse encourages abuse and increases the risk of causing offence.<sup>335</sup> If someone has to be denounced, the prejudices of the audience should be taken into account and they should be won over by flattery, in order to diminish the risk to the speaker.<sup>336</sup> There needs to be a balance between what is becoming and what is expedient.<sup>337</sup> Ridicule and invective become acceptable if they are presented in terms of the public good, as a benefit for society as a whole. For example, the Romans considered that deformity and ugliness were a mark of moral depravity rather than misfortune and therefore they became legitimate targets for the orator.<sup>338</sup> This tactic continued from the late Republic into the principate. Quintilian suggests that witnesses may be undermined by questions that reveal their unfortunate past, disgraceful conduct or degrading occupation.<sup>339</sup> Birth, nationality, sex, education, age, appearance, fortune, status, disposition and occupation all provide indications of someone’s likely behaviour.<sup>340</sup>

The style of oratory under the principate, introduced by Severus and employed by Labienus, has been presented as particularly outspoken – “*acerbitas*”. Rutledge opposes this view and argues that this change is illusory and arises from the hostility that authors such as Tacitus or Pliny felt towards the

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<sup>335</sup> Quint. *Inst.* 12.9.8-9.

<sup>336</sup> Quint. *Inst.* 3.7.23-4.

<sup>337</sup> Quint. *Inst.* 2.13.8.

<sup>338</sup> Corbeill 1996: 14-56. Corbeill 1996: 71-98 argues that Roman *cognomina* were applied insultingly. Watson 1970 argues that the sound of the name was as important as the meaning in Cicero’s invective. However, Quintilian’s evidence suggests that insults based on names were not acceptable in oratory by the end of the first century. Clarke 2007: 65-81 argues that laughing at deformity had an atropaic function, deflecting ill fortune.

<sup>339</sup> Quint. *Inst.* 5.7.26-34.

<sup>340</sup> Quint. *Inst.* 5.10. 23-31. Corbeill 1996 discusses possible targets for invective: “unmanly” behaviour expressed in over indulgence in food, sex, and luxurious living was seen as an indication of moral deviance.

*delatores*.<sup>341</sup> Rutledge is able to demonstrate considerable continuity in style from the late Republic. This meant that the orator needed a way to demonstrate that his use of invective was disinterested and his motives for employing it were pure. In order to denounce others, he needed to establish his own moral authority. Cicero, although he acknowledges that it is an ideal seldom met, thinks that the orator should possess humour, wit, culture worthy of a freeborn gentleman, sharp ripostes when attacked and all this combined with a subtle charm (*venustas*) and urbanity (*urbanitas*).<sup>342</sup> For Quintilian, writing 150 years later, the same concepts remain central. His ideal pupil has not only intellectual ability, but is also of good character (*probus*). In fact, a stupid pupil is preferable to a bad one.<sup>343</sup> Cato's famous definition of an orator as "a good man, skilled in speaking" is still relevant.<sup>344</sup>

Corbeill suggests that the disgrace accruing from invective was so great that it functioned as an extra-legal punishment.<sup>345</sup> Although we know that fear of disgrace made the elite reluctant to instigate court cases, that view is more problematic.<sup>346</sup> Anyone could find themselves accused, and Quintilian advises the orator to assign appropriate character flaws to the parties in the case, so that thieves are represented as greedy, adulterers lustful, or murderers impulsive. In defence, the qualities must be reversed.<sup>347</sup> The accuracy (or otherwise) of these imputations is not a factor; the orator is still a good man when he speaks as best assists the case he is making.<sup>348</sup> There needs to be a balance between saying what is suitable and what will win the case.<sup>349</sup> This was why someone's services as a speaker in court were represented as part of a wider network of exchange of

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<sup>341</sup> Rutledge 1999.

<sup>342</sup> Cic. *De or.* 1.5.17.

<sup>343</sup> Quint. *Inst.* 1.3.2.

<sup>344</sup> Expanded upon again for example Quint. *Inst.* 4.1.7–8.

<sup>345</sup> Corbeill 1996: 19.

<sup>346</sup> For reluctance to engage in litigation see for example Kelly 1976: 93–112.

<sup>347</sup> Quint. *Inst.* 4.2.52.

<sup>348</sup> E.g. Quint. *Inst.* 11.1.8–15 on balancing what is expedient with what is fitting.

<sup>349</sup> Quint. *Inst.* 2.13.8. *res duas in omni actu spectet orator, quid deceat, quid expediat.*

favours and influence, rather than motivated by self-interest which would cast his moral agenda into doubt. There was a polite fiction that an orator took on cases only for the noblest of reasons, and this attitude remains consistent in the sources. In 94 BC Antonius defended the disreputable Norbanus and resorted to the strategy of claiming “he was my quaestor” (and therefore owed loyalty) in order to counter criticism over defending a citizen accused of undermining state security.<sup>350</sup> In c. AD 95, Quintilian advises that the court should believe that the advocate acts by reason of duty to a friend, relative or country and that he is motivated by moral considerations.<sup>351</sup> Pliny, too, feels the need to make his excuses for taking on particular cases, quoting Thrasea Paetus’ advice that one should act for friends, those without legal representation, or in order to set a precedent.<sup>352</sup> He adds his own view that cases which bring fame and glory are also acceptable. Fame and glory, it may be noted, rather than sordid financial rewards. Pliny’s view may be bolstered by the fact that he was wealthy in his own right, and had no particular need to make money through his advocacy.<sup>353</sup> However, the potential financial rewards of oratory were considerable and the sources suggest that those who made large profits were viewed with suspicion because this undermined the disinterested, moral basis of their invective.<sup>354</sup>

The evidence shows that invective and ridicule had its place in the courtroom, but it operated within rules of conduct, based on the understanding that the orator was a good man acting for good purposes in censuring the bad and praising the good. Ridicule and invective which operated outside those rules damaged rather than enhanced the orator’s reputation and therefore his social position.

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<sup>350</sup> Cic. *De or.* 2.49.202.

<sup>351</sup> Quint. *Inst.* 4.1.7.

<sup>352</sup> Plin. *Ep.* 6.29.

<sup>353</sup> For elite attitudes to wealth and money making, see for example MacMullen 1974: 88, 94-108. 114-20; Veyne 1987: 118-134.

<sup>354</sup> Attitudes were complicated by delation, which was feared and despised, but which emperors could not manage without. See Rutledge 2001 for a discussion of attitudes towards and rewards for delation.

## 2.5.2 Ridicule, invective and appropriate speech in satire

Roman satire and epigram has a Hellenistic and Republican pedigree, perhaps even going back to Indo-European praise and blame poetry.<sup>355</sup> The Romans recognised satire as a distinct genre, and Quintilian observes that this was the only form of literature invented by the Romans themselves.<sup>356</sup> They also enjoyed the type of verse that Pliny refers to as “trifles” (*nugae*) or “play” (*lusus*) – composed for entertainment and so presumably incorporating satire, epigram and Menippean satire.<sup>357</sup> This does not mean that satirical poetry is homogenous: part of the difficulty in interpretation may lie in the differing status of the poets. Members of the elite such as Pliny, Seneca or Petronius composed light verse to amuse their social circles, and were rewarded by applause. Poets of lesser status such as Martial or Juvenal actively sought support from patrons for their endeavours.

The satirist presents himself as particularly at risk of giving offence, since he reveals secret vices that damage the public good. Not only does he do this, but he employs obscene or abusive language which may be offensive in and of itself. We know writers of satire could find themselves in court, as did Cassius Severus in c. AD 8 and Fabricius Veiento in AD 62. They were charged with defaming the emperor or members of the elite and the evidence suggests factional politics among the elite were partly to blame. However, that was not the whole story, so that it remains to investigate why some cases were prosecuted when others were not.

Poets capitalise upon the social conventions for festival occasions in order to excuse offensive elements in their work. When Ovid defends his *Ars Amatoria*, he plays with the tradition that warned those who had no place at a celebration to

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<sup>355</sup> Spisak 2007: 1-3.

<sup>356</sup> Quint. *Inst.* 10.1.93.

<sup>357</sup> Plin. *Ep.* 4.14.1, 8-9. For the difficulty of defining satire see for example Freudenburg 2001: 1-4; Rimell 2008: 6-7. Nisbet 2003: 196-202 discusses eminent Romans writing epigram as a leisure pursuit.

stay away. He claims that he had a particular audience in mind. It was never intended for respectable women, but only for the *demi-monde* from whom mistresses might be chosen.<sup>358</sup> Yet he exploits this convention as part of the joke, by pointing out that if a wife is so inclined, she can misread even the most serious historical works as salacious. This is a theme he develops, suggesting that smutty stories are lurking within even the greatest works of epic and tragedy. Ovid's joke works by saying the unsayable: the boundary between clean and unclean, obscene and acceptable depends upon the audience's willingness to accept the poet's intentions. This is why parody is so dangerous for a Roman audience: it mixes the signals. By confusing serious and humorous, flattery and insult, parody challenges the audience's expectations and response. Richlin argues that this is where Ovid's particular power to offend lies: parody contaminates the original. "[T]he noble saga of Troy, in some parts at least a constituent of the *dignitas* of the Caesars, had lost some of its shine when Ovid was through with it."<sup>359</sup> Ovid positions his poetry so that boundaries between the acceptable and the obscene are not clearly defined. They become a matter of negotiation between audience and author. If this audience contains someone in a position of power who chooses to take offence, then their disapproval can have serious consequences.

Anderson argues that problems in interpretation arose when Martial's poems were read in a published collection, abstracted from their original festival setting. That made it much more difficult for the author to control the way they were received or to manage identification of intended targets.<sup>360</sup> Anderson believes

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<sup>358</sup> Ov. *Ars Am.* 1.31-4, 2.599-600, 3.27; reprised at *Tr.* 2.243-52, *Pont.* 3.3 49-64. For interpretation see e.g. Alden 2006, who sees *Tr.* 3.1 as "flippant" and "defiant"; Nugent 1990 on problems of sincerity.

<sup>359</sup> Richlin 1992: 156. See also Freudenburg 2001: 238-9 on problems of parody contaminating the original. The reasons for Ovid's exile cannot be properly explored here, but the poet himself ascribes the cause, at least in part, to offence caused by his poetry and part of the punishment included the banning of his books from imperial libraries. Ov. *Tr.* 1.1. 105-22; 2.130-154; 3.1. Williams 1982 argues that the exile was primarily on literary and moral grounds, whereas Levick 1999: 60-1 argues for a political explanation.

<sup>360</sup> Anderson 2011: 199.

that Martial's criticism as well as his praise is aimed at real people, and this is why Martial employs strategies to control the way his work is read and so minimise the risk of giving offence.<sup>361</sup> The point that published poems can be read outside the festival situation is an especially useful one, because that creates a disconnection between the reader and the event it describes. It also allows the reader to dwell on the poem in a way that would not be possible during a *convivia*. At first sight, then, it is not surprising that Martial begins his epigrams by presenting his poetry as suitable for festival occasions. He also emphasises the relationship between the author and his audience:

spero me secutum in libellis meis tale temperamentum ut de illis  
queri non possit quisquis de se bene senserit, cum salva  
infirmarum quoque personarum reuerentia ludant; quae adeo  
antiquis auctoribus defuit ut nominibus non tantum ueris abusi  
sint sed et magnis. ... absit a iocorum nostrorum simplicitate  
malignus interpres.

I hope to have struck a balance in my little books such that  
nobody can complain of them who has a good opinion of himself;  
their jesting is with respect of persons, even the humblest, respect  
which was so lacking in writers of old that they made free not  
only with real names, but even with great ones ... My quips are  
straightforward. I want no interpreter's malice...<sup>362</sup>

His concern, he says, is with moderation and appropriate response – the same issues that Pliny and Seneca debated when they considered how to behave during Saturnalia. Martial goes on to say that although he uses the licence of epigram, he does so because he is following the example of his predecessors and because it suits the occasion. Martial's juxtaposition of "*personarum reverentia*" with

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<sup>361</sup> Anderson 2011: 198-9.

<sup>362</sup> Mart. 1. pr.1-2.1.

“*ludant*” introduces an essential element of his self-representation.<sup>363</sup> He is playing, but it is appropriate play. Cato is used as an inverted example, the moralist who behaves inappropriately by approaching only to express disapproval. Martial states explicitly that only an unpleasant interpreter will find problems with his simple jokes.<sup>364</sup>

This is a theme that recurs.<sup>365</sup> Martial even explodes the conventional warning into a joke, advising respectable matrons to look away now, because the rest of the book will be unsuitable for their delicate gaze.<sup>366</sup> Martial acknowledges that this will enthrall rather than repulse the reader, and later in the book the same matron is still reading.<sup>367</sup> Martial defends his poems because they are no worse than the mimes the matron visits and therefore they should not be condemned. Epigrams have their place and should be enjoyed for what they are.<sup>368</sup> This is not unreasonable, since it accords with the convention that some occasions are appropriate to licence and the inversion of normal behaviour, while others are not. So, when he introduces book 5, dedicated to Domitian, Martial claims that this means those who enjoy racier material should look to his other books.<sup>369</sup> These jokes echo elements in Ovid’s subversive self-presentation, but Martial presents them differently. He is a poet whose works are playful, but appropriate.

There is a wider problem of interpretation, because of the nature of Martial’s *libelli*. The epigrams appear to be thrown together at random, or even placed so that an apparently serious message is undercut and becomes paradoxical. When Rimell discusses the difficulty of interpreting Martial’s political views, she argues that he employs “paradox and inconsistency within the frame of the

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<sup>363</sup> Similarly expressed at Mart. 7.12.9: *ludimus innocui*.

<sup>364</sup> Spisak 2007: 27-8 observes that Martial twists the story of the great moralist Cato leaving the theatre in order not to discomfort others into an example of inappropriate severity.

<sup>365</sup> E.g. Mart. 1.35, 1.91, 1.110, 3.69, 5.2, 6.64, 7.72, 11.15, 11.16.

<sup>366</sup> Mart. 3.68.

<sup>367</sup> Mart. 3.86.

<sup>368</sup> E.g. Mart. 1. *Pr.*; 1.35. 11.16 reworks the joke.

<sup>369</sup> Mart. 5.2. Richlin 1992: 10-11 suggests that this is simply a matter of convention “a sort of by-your-leave” and not to be read seriously.

*libellus* ... Complex, multiple interactions between poems ... create an environment of split perspectives and theatrical posing...<sup>370</sup> Rimell suggests that the lack of obvious structure and seemingly random order of the epigrams mean that the reader is left to judge the poet's intentions. Martial can deny his own accountability by placing responsibility for interpretation with his audience. This means that any criticism arises from the malign nature of the hostile reader, and not from anything intrinsic to the poems.<sup>371</sup>

The fact that many scholars have observed patterns and cycles within the apparently random placement of the epigrams suggests that Martial's position is more complicated than this.<sup>372</sup> One of these themes is Martial's reworking of the idea of appropriate and inappropriate conduct. The first poem addressed to Domitian develops the message of the prologue:

contigeris nostros, Caesar, si forte libellos,  
 terrarum dominum pone supercilium.  
 consuevere iocos vestri quoque ferre triumphi,  
 materiam dictis nec pudet esse ducem.  
 qua Thymelen spectas derisoremque Latinum,  
 illa fronte precor carmina nostras legas.  
 innocuos censura potest permittere lusus:  
 lasciva est nobis pagina, vita proba.

Caesar, if you happen to light upon my little books, put aside the frown that rules the world. Even the triumphs of emperors are wont to tolerate jests, and a general is not ashamed to be matter for a quip. Read my verses, I beg, with the expression with which

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<sup>370</sup> Rimell 2008: 13-14.

<sup>371</sup> Anderson 2011 discusses social context, literary agenda, and the need to deflect potential hostility. He focusses on the preface to Book 1 and proposes that Martial actively sets out to "guide" the reader's emotions. Thus Martial avoids offence "by articulating a poetic and ethical *persona* that seeks *not* to harm and a mode of reading that does not allow for it". (p. 198).

<sup>372</sup> Fitzgerald 2007: 3-8; Rimell 2008: 13-14.



you watch Thymele and jesting Latinus. A censor can tolerate  
harmless jollity. My page is wanton, but my life is virtuous.<sup>373</sup>

Martial repeats that his poetry is appropriate to its occasion, just as insults are allowed at a triumph or a mime performance. He introduces a new element here: the poet himself is morally upright, and so separate from his suspect works. This is a literary commonplace, and for example Pliny uses it, quoting Catullus for justification.<sup>374</sup> This should not obscure its importance in distancing the everyday world from the fictionalised, festival world of epigram; the fact that it is used frequently suggests it was successful. Martial reminds his audience that a satirist is not his satire.

Martial examines the same ideas from different viewpoints, so for example when he complains about Cornelius' criticism of his epigrams, he reprises exactly the concepts that were expressed in the prologue and poem 4, but this time with explicit sexual imagery.<sup>375</sup> This, he tells us, is necessary and appropriate:

quare deposita severitate  
parcas lusibus et iocis rogamus,  
nec castrare velis meos libellos:  
Gallo turpis est nihil Priapo.

So please put prudery aside and spare my jests and jollities; and  
don't try to emasculate my little books. There's nothing uglier  
than a neutered Priapus.<sup>376</sup>

This poem follows another obscene epigram about the immodest Lesbia. Rimell sees the deliberate difficulty with their juxtaposition: "taken together, the two poems perform an absurd contradiction that this book, especially, flaunts ... a

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<sup>373</sup> Mart. 1.4.

<sup>374</sup> Plin. *Ep.* 4.14.4-5. Freudenburg 1992: 2 argues that the device arises from rhetorical practice.

<sup>375</sup> Mart. 1.35.

<sup>376</sup> Mart. 1. 35.12-15.

prime example of how imperial carnival, like epigram, marries carefree licence with bitter restraint.”<sup>377</sup> It is, however, possible to see a different and equally absurd joke here, which provides parallels rather than contradictions between the two cases. Lesbia’s behaviour is not appropriate even for a prostitute, and she needs to be more discreet. Cornelius’ mealy-mouthed complaints miss the point of epigram, and he needs to be less severe. Here, and throughout the *libelli*, Martial interweaves poems that deal with questions of balancing appropriate and inappropriate behaviour. When greedy Caecilianus eats all the mushrooms, or Sosibianus addresses his father as “dominus”, or Scaevola refuses to spend his new wealth, these different poems reflect the same problem.<sup>378</sup> The subject and the detail change, but the poet asks his audience to consider whether examples of speech and behaviour fit the occasion. The audience are invited to laugh at the social ineptitude of Martial’s victims. Martial is offering his audience “wrong” responses to a situation and this means that they have to think about what is “right”. This is poetry which sets out a moral position and in this way Martial differs from Ovid.<sup>379</sup> Ovid’s frivolousness means he refused to commit himself and his poetry to one interpretation and so leaves his audience to impose their own moral reading. This is not to say that Martial is heavy handed. He teases the reader in positioning his epigrams and as their juxtapositions are part of the joke they are not intended to be transparent or staid. Nonetheless, concern for appropriateness is a recurring theme and one that extends to his interest in plagiarism, the misappropriation and so the misplacing of his own poetry.<sup>380</sup> The final responsibility for interpretation may indeed lie with the reader, but Martial gives his audience responsibility. He makes sure that the *malignus* has no excuse

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<sup>377</sup> Rimell 2008: 207-8.

<sup>378</sup> Mart. 1.20, 81, 103.

<sup>379</sup> Spisak 2007: 30-33 argues that Martial claims the “privilege” of speaking out because he acts without malice and for the community’s benefit.

<sup>380</sup> E.g. Mart. 1.29, 1.35, 1.52, 1.53, 2.20.

for misunderstanding the festival context. This poetry is humorous, the audience are told not to take it seriously, and above all it is appropriate for its setting.<sup>381</sup>

Martial's concerns are not unique. Pliny, too, is anxious to be seen to write appropriate poems for festival occasions. Pliny summarises Titius Aristo's information that there has been criticism of his *versiculi*:

[You say that] fuisse apud te de versiculis meis multum  
copiosumque sermonem, eumque diversitate iudiciorum longius  
processisse, exstitisse etiam quosdam, qui scripta quidem ipsa non  
improbarent, me tamen amice simpliciterque reprehenderent, quod  
haec scriberem recitaremque. quibus ego, ut augeam meam  
culpam, ita respondeo: facio non numquam versiculos severos  
parum, facio; nam et comoedias audio et specto mimos et lyricos  
lego et Sotadicos intellego; aliquando praeterea rideo iocor ludo,  
utque omnia innoxiae remissionis genera breviter amplectar,  
homo sum.

There were some who, without censuring the works themselves,  
rebuked me in a friendly and open way for writing and reciting  
them. To exacerbate my fault, my response to them is this: I grant  
that on occasion I write verses that are far from dignified; yes, I  
grant it; moreover I also listen to recitations of comedies, I watch  
mimes, I read lyric poetry and I appreciate Sotadics. Then too  
there are occasions when I laugh, make jokes, sport, and – let me  
summarise all the forms of harmless relaxation – am human.<sup>382</sup>

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<sup>381</sup> The question of how seriously to take Martial's epigram is a vexed one. Dupont 1999: 120-3 argues that poems commemorating a dinner party or other social event are so ephemeral as to be worthless. This ignores the pleasure of recalling a shared or common experience, a point made by Rimell 2008: 147. It also overlooks the possible prestige resulting from being commemorated in epigram, which will be addressed in section 2.5.3.

<sup>382</sup> Plin, *Ep.* 5.3.1-2.

This is a standard defence of the writer of risqué verses: they suit the occasion. Pliny goes on to say that although modesty forbids him from a comparison with living writers, the most eminent senators of the past wrote such verses. He then lists twenty-six examples. Pliny even twists the traditional *vita proba* argument by dismissing Nero as an *exemplum*: verses do not become depraved even when wicked men write them.<sup>383</sup>

How seriously should we take the suggestion that Pliny is responding to genuine criticism?<sup>384</sup> The topic of appropriate behaviour has recurred in his concern over how to behave at the Saturnalia and at dinner parties, now he reacts to the idea that his verses are inappropriate to his *dignitas* as a senator. He provides his audience with additional information. The reported rebukes are not bitter and there is no malice behind them. Pliny's actual poems appear to be beyond reproach. The letter moves on to deal with problems of *recitatio* generally and the importance of accepting literary criticism and adapting one's output as a result. He finishes by reprising the theme of appropriateness: he has begun to lecture and recalls the intimate nature of his recitation.<sup>385</sup> Pliny presumes – or affects to presume – that once his friends understand that his poetry is appropriate for festival occasions, reflects his good character and follows in the best literary tradition, they will realise it does him credit.

This argument is important enough for Pliny to revisit when he sends his “hendecasyllables” to Paternus.<sup>386</sup> After the standard defence that obscene verses do not reflect the poet's virtuous life, Pliny adds:

ex quibus tamen si non nulla tibi petulantiora paulo videbuntur,  
erit eruditionis tuae cogitare summos illos et gravissimos viros qui

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<sup>383</sup> Plin. *Ep.* 5.3.4-6.

<sup>384</sup> Morello 2007: 174-9 argues convincingly that Pliny shifts the focus from the problem of obscene verses to that of how to be a friendly critic at a *recitatio*. However, it is notable that it is worth fashioning his own public image in regard to this, perhaps even as pro-active defence before criticism can be made.

<sup>385</sup> Plin. *Ep.* 5.3.7-11.

<sup>386</sup> Plin. *Ep.* 4.14.

taliam scripserunt non modo lascivia rerum, sed ne verbis quidem nudis abstinuisse; quae nos refugimus, non quia severiores (unde enim?) sed quia timidiore sumus.

If several of these poems seem to you rather too coarse, your learning must cause you to reflect that those outstanding and highly serious men who wrote verses like these avoided neither wanton topics nor even explicit language. I have drawn back from such treatment not because I am too puritanical (why should I be?) but because I am too cowardly.<sup>387</sup>

Pliny is afraid of damage not to his moral reputation, but to his reputation as a poet. The fact that he is willing to circulate the poems suggests that he has no real anxiety about their causing offence. When Pliny asks Paternus what he will say to a third party, that emphasises his concern for social judgements. He lessens the stakes by presenting the poems as mere trifles, and as a work in progress. Indeed he prepares Paternus' response for him, just as Martial prepares his audience. Pliny's poems are amusing trifles, suitable for leisure, and such as gentlemen compose. He knows what is appropriate for the occasion. Both Pliny and Martial provide a framework for their audience to react within the context of festival literature. In Pliny's case, there may even be an element of double bluff. One of the topoi of light verse is deriding those serious persons who fail to recognise when it is appropriate to relax: their disapproval of festival occasions reflects badly upon them. We have already seen Pliny dismiss allegations that he is expected to behave strictly at all times.<sup>388</sup> Writing naughty poems has a certain glamour about it. It is possible that Pliny is trying to gain admiration for his festival verses, while making sure that he does not circulate anything that might really offend his audience.

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<sup>387</sup> Plin. *Ep.* 4.14.4.

<sup>388</sup> Plin. *Ep.* 7.4. For disapproval of *severiores* e.g. Catullus 5.2-3, 27.5-7; Mart. 1. pr. and 1.35 (discussed above).

### 2.5.3 Named targets in Roman satire

Although Roman satire looked back to Lucilius, notorious for his direct insults against recognisable individuals, this was not a feature of satire of the early empire. On the whole, poets avoid naming – and therefore shaming – real individuals. There are exceptions – Juvenal uses figures from the recent past, and some of Martial’s epigrams can be related to known patrons.<sup>389</sup> However, even when the poet set up an “everyman” as his target, the audience were able to make associations between the poem and real life events. Epigrammatic poetry for recital at a *convivium* or Saturnalian party depended upon the audience recognising real life parallels or the jokes lost their point. Since elite Roman society was relatively small, it must have been difficult to disguise references to individuals or to keep a witty epigram from circulating. Nor is it clear that it was always desirable to do so.

When Martial defends himself against the accusation of giving offence, he moves beyond the standard formulae of justification into presenting himself as someone whose art advances fame. He mocks a reader who wrongly believes he is to be the subject of a poem. He inverts the satirist’s traditional defence when he tells Quintus that he and his mistress were not the intended targets of an epigram.<sup>390</sup> The joke is twisted so “Quintus” (still perhaps pseudonymous) has revealed his guilt by taking offence. Martial claims that people are grateful for the recognition they receive in his poetry.<sup>391</sup> Indeed, he refuses to give an unnamed person the satisfaction of appearing as the subject of a poem.<sup>392</sup> Martial, at least in his own presentation, has the power in this situation. It is worse to be ignored than to be satirised. This raises a tantalising question of whether association with an epigram, at least in its milder forms, was automatically disgraceful. A balanced

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<sup>389</sup> Nauta 2002; 37-87 for non-imperial patrons in Martial’s epigrams. Juvenal’s choice of past targets may not have been entirely “safe”. E.g. Tac. *Ann.* 4.33 notes that descendants of those you criticise may take offence.

<sup>390</sup> Mart. 3.11.

<sup>391</sup> Mart. 5.15

<sup>392</sup> Mart. 5.60.

discussion is difficult because the evidence that survives emphasises occasions when offence was taken rather than when someone responded with pleasure, though Suetonius has an anecdote about Vespasian asking to be made the subject of a joke.<sup>393</sup> It can be suggested that public recognition was desirable. White argues that both Martial and Statius published epigrams created for particular dinner parties and so commemorate the event and compliment the host.<sup>394</sup> Whether or not he is correct, the concept that epigram was a way of providing public attention is intriguing. Pliny shows delight when a visitor to Rome was able to recognise him by his description.<sup>395</sup> Would a Roman with social ambitions be sufficiently fame-hungry that pride at being the subject of mild epigram offset any minor embarrassment?<sup>396</sup>

This is not to suggest that the risks of naming and shaming someone over more serious misconduct were negligible. Some modern critics see satirists' reluctance to name targets as a form of self-censorship arising from political constraints. For example, Freudenburg suggests that Horace needed to handle his theme of *libertas* carefully in order not to cause offence. He is not able to risk criticising Octavian through implying that there are constraints on freedom of speech. Instead, he uses humour as a way of engaging indirectly with the issue. He also turns his criticism into a literary one, blaming Lucilius' rough style as the source of his difficulty with his precursor.<sup>397</sup> Other scholars deny that there was a problem with naming targets and argue that fictionalisation is an "internal literary issue", and so is a matter of genre rather than suppression.<sup>398</sup> Some see

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<sup>393</sup> Suet. *Vesp.* 20.

<sup>394</sup> White 1974.

<sup>395</sup> Plin. *Ep.* 9.23. Here there is no question of satire, but the case does show a concern for being known by reputation beyond one's immediate circle.

<sup>396</sup> Perhaps a modern parallel can be drawn with E. F. Benson's gentle satire of the formidable social climber Elizabeth Mapp-Flint, who is delighted when an unflattering portrait is exhibited at the Royal Academy to general acclaim - E. F. Benson *Trouble for Lucia* (London, 1939). Certainly Richlin 1992: 103 (on Republican political invective) suggests that "it was better to be the man singled out for scorn than a non-entity".

<sup>397</sup> Freudenburg 1992: 100-5.

<sup>398</sup> Plaza 2006: 21. Braund 2004 sees concerns over *libertas/licentia* in terms of a "game" and questions how far there was real danger.

advantages in generalisation, since it allowed the audience to relax and enjoy the joke without fear of repercussions.<sup>399</sup> Damon makes an alternative suggestion that since the victim is not specifically named, the poem may be taken to refer to any and everybody. As a result, the entire audience feel guilty, as “Quintus” did in response to Martial’s epigram discussed above.<sup>400</sup>

The plethora of theories and the obvious difficulty in aligning them may in fact reveal an essential aspect of satire. The satirist is not restricted to a single voice, and he may both entertain and horrify his audience in the same lines. Quintilian observes that there is pleasure in hearing others say what we dare not express ourselves; outrageousness is a key element in satire.<sup>401</sup> There are perhaps modern parallels with “shock jock” radio or television talk shows which both appal and fascinate their audience. However, this is not a parallel which should be emphasised too far, because satire has a serious moral agenda. Spisak argues that Martial has ethical intentions and means to offer instruction through entertainment.<sup>402</sup> The satirist reveals what he sees in the interest of the greater good. Ridicule and invective are therefore justified through their moral purpose. This in turn allows satirists to move away from the benign, Aristotelian model of the liberal jest and incorporate elements of the harsher Old Comedy.<sup>403</sup> Such humour was linked with more overt concepts of justified *libertas*: the joke had a moral purpose in reinforcing social acceptability. Braund suggests that the satirist positions *libertas* as free speech he approves and *licentia* as that which he despises. This lets him claim the moral superiority associated with *libertas* while

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<sup>399</sup> Richlin 1992: 105-113; Nauta 2002: 175.

<sup>400</sup> Damon 1998: 147; Freudenburg 2001 argues that satire exploits the reader’s readiness to condemn others into a realisation that they are complicit with the vices criticised. The epigram is Mart. 3.11.

<sup>401</sup> Quint. *Inst.* 2.12.5.

<sup>402</sup> Spisak 2007: 3. Similar ideas implied by Richlin 1992: 57-60, 63-5; Braund and Raschke 2002.

<sup>403</sup> Freudenburg 1992: 52-4, 61-72 argues that Old Comedy had absorbed the censorial, outspoken function of iambics to criticise someone’s flaws. This was associated with the Cynics’ theory of mockery where faults were censured for the offender’s own good. See also Grant 1924: 54-9. Censure and criticism among the elite will be discussed in chapter 3.



avoiding criticisms for *licentia*. Her view of a “dynamic tension” between *libertas* and *licentia* is an attractive one, since a refusal to maintain a stable position is marked element of the genre.<sup>404</sup> Persius contrasts his own work with that of his contemporaries and offers it as a corrective.<sup>405</sup> Juvenal mocks contemporary literature and says he is offering an alternative form. Rome is so depraved it is impossible for him to do anything but write satire and reveal its horrors.<sup>406</sup>

It is sometimes suggested that Martial is at particular risk of having his status misunderstood, since he creates poetry to entertain the company, and so may find himself ranked with the despised *scurrae*. Damon analyses a number of Martial’s poems and suggests that Martial separates fictional parasites, who embrace the duties of the client in return for a meal, from his own voice. It is therefore Martial himself who addresses “real” patrons without describing himself in the role of client.<sup>407</sup> Nauta goes further, suggesting that Martial’s poetry bestows cultural prestige. He is a poet in his own right, not a dinner-party wit, and his poems can be published because they are worthy of a wider audience.<sup>408</sup> Nauta proposes that Martial uses fiction as an “honour strategy”: “With his gentle mockery of real persons Martial behaved as the gentleman guest he was, while with his savage mockery of fictional persons he played the role of the *scurra*, yet without compromising his own status and without endangering the seriousness of his praise when he offered praise.”<sup>409</sup>

However, there is a difficulty in that all the evidence about naming targets is “internal” – in other words, it comes from comedy, satire and epigram. This means it may poorly reflect reality, and for example Cloud suggests that Juvenal’s presentation of Roman society is sufficiently fictionalised that it does

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<sup>404</sup> Braund 2004: 409-10.

<sup>405</sup> Pers. 1.

<sup>406</sup> Juv. 1.

<sup>407</sup> Damon 1988: 146-167.

<sup>408</sup> Nauta 2002: 178-9.

<sup>409</sup> Nauta 2002: 179.

not accurately present daily routines.<sup>410</sup> This makes it unclear how far any poet could control the line between literary play and real life offence, however cleverly he weaved his defences. Positioning satire as poetry with a moral purpose offers only fragile protection, because it is a short step from the role of critical observer to that of open critic. That is a much more dangerous situation, made worse if the target knows that he is being reproached. Both Severus and Veiento found themselves on trial for satirising members of the elite. Their position may have been particularly awkward because they were not reliant on their poetry for patronage but rather were amongst the group that composed poetry as a diversion. In other words, they could not be dismissed as lowly *scurrae* who might bark, but not bite – the position that Martial seems also to have wished to attain. Tacitus tells us that Cassius Severus had defamed men and women and women of repute (*illustri*) in his scandalous writings.<sup>411</sup> It is not clear how directly Severus has named his victims, but they certainly recognised themselves. There may be a combination of factors at work, since Severus had neither influential supporters to intervene on his behalf nor the moral authority to attack the elite with impunity. He was exiled and his books were burned.

Veiento seems to have managed to embarrass the emperor as well as the elite, since Nero dealt with him as an *amicus* and the charges included sale of offices:

crimine Fabricius Veiento conflictatus est, quod multa et probrosa  
in patres et sacerdotes composuisset iis libris, quibus nomen  
codicillorum dederat.

Fabricius Veiento succumbed to the ... charge of composing a  
series of libels on the senate and priests in the books to which he  
had given the title of *Codicilli*.<sup>412</sup>

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<sup>410</sup> Cloud 1989.

<sup>411</sup> Tac. *Ann.* 1.72.3. primus Augustus cognitionem de famosis libellis specie legis eius tractavit, commotus Cassii Severi libidine, qua viros feminasque inlustris procacibus scriptis diffamaverat.

<sup>412</sup> Tac. *Ann.* 14.50.

Once again, there were multiple, illustrious victims and it is possible that the targets were named directly. Veiento's work was titled *Codicilli* ("Will" or "Testament") which may be a nod towards Tiberius' earlier ruling that wills should not be subject to censorship but read in full.<sup>413</sup> Veiento was relegated and his books were burnt. However, he recovered. He is found as a *delator* under Domitian and as an intimate of Nerva's.<sup>414</sup> Perhaps the *Codicilli* represent a youthful misjudgement, an attempt to follow the popular fashion for satirical verse, which provided an opening for a political enemy to strike. We have seen that Tacitus' verdict of their quality was scathing and their appeal lasted only as long as they were forbidden.<sup>415</sup>

## 2.6 Conclusion

This chapter has examined what might cause a member of the Roman elite to take offence, and failed to find a simple answer. The speaker, his audience, and the occasion all impact upon how discourse is received, and the question of offensiveness revolves around issues of relative status. This is not something an individual can direct for himself since it is dependent upon others' evaluation. Misjudging what should be said in a particular place with a particular audience had potentially serious consequences. Obscenity and humour were especially problematic because they were difficult to control. The speaker's own status affected the reception of humorous or obscene remarks. A person of high status – an emperor or consular – would usually find his jokes well received. For persons of lesser status, such as Cassius Severus, this might not be the case.

There were times when obscenity and ridicule were appropriate. They were a feature of "liminal" occasions when social norms were suspended to mark the separation from the everyday world, and of festival occasions. However, even Saturnalia and *convivia* did not mean a complete suspension of rules. Instead,

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<sup>413</sup> Tac. *Ann.* 6.38. Bauman 1974: 32, further argued by Rudich 1993: 267.

<sup>414</sup> Juv. 4. 113, 123-9; Plin. *Ep.* 4.22.4.

<sup>415</sup> Tac. *Ann.* 14.50 donec cum periculo parabantur: mox licentia habendi oblivionem attulit.

they operated under their own code. This led to some uncertainty about what was acceptable. It explains both the enthusiasm for “rules” with which to negotiate such festival occasions and the anxiety with which contemporary authors view them.

Literature composed for such festival occasions does indeed, as Mikhail Bakhtin saw, need to be interpreted in its context. However, in the elite Roman setting, it is too simplistic to understand this as “licensed” literature, which can say what it pleases. Anxieties about appropriate speech and relative status pervade festival literature. This is why the same set of justifications are repeated: the poetry is suitable for the occasion, the poet himself is moral, and even the most eminent men compose such verses. These are the “rules” of festival literature in elite Roman society. However, they depend upon the audience accepting the poet’s representation of his work as appropriate. If the audience rejected the poet’s formulation and condemned his work as obscene or offensive, he had little redress. Martial and Pliny both work hard to emphasise the suitability of their work for its occasion so that there is as little room as possible for the audience to re-impose a different and less acceptable interpretation.

Ridicule and obscenity could be justified as having a higher moral purpose. Orators represented themselves as acting out of concern for public interest, and satirists too claimed a moral agenda. Humour and obscenity operated to reinforce acceptable behaviour and shame the deviant. That this was still problematic is illustrated by Cicero and Quintilian’s advice to the orator on how to avoid giving offence. Concern to maintain one’s own dignity was paramount, and so obscenity was best avoided and ridicule used with care. Satire, too, had its problems, especially in regard to insulting named, influential targets. This issue has been complicated because of poets’ playfulness around the issue of naming, and because sometimes it could be desirable to be the subject of mild epigram. It remains clear that there was potential for catastrophic misjudgement: if the target of satire felt his status was damaged, he had to respond or lose face further. If this person was powerful in his own right, or had powerful friends, then the

matter was serious, perhaps life-threatening. No wonder circumspection was used.

Understanding causes of offence is further complicated because the elite do not necessarily spell them out, even to themselves. Social norms were assimilated as part of the process of maturing and taking one's place as an adult. These incorporated concern for relative social status, and an understanding that obscenity and ridicule had their place at the margins of polite society. No wonder that the glimpses we have, in Seneca, Martial and Pliny, reveal the terrible anxiety of trying to negotiate the shifting, imprecise world of etiquette and relative status. The strategies that the elite employed for avoiding offence bring us to the subject of the next chapter.

### 3: Social conventions and status anxiety among the Roman elite: communication and strategies for avoiding offence

#### 3.1 Introduction

It is now time to consider occasions when there was no question of licence for insult. In normal circumstances people do not spell out how they expect others to speak or behave, because social conventions operate automatically. That means that some of the most helpful primary sources are those which advise on education. Plutarch and Quintilian both do this, instructing young men on how to make a good impression on their elders and betters. The philosopher Epictetus offers counter-cultural examples, revealing normal social expectations by challenging them. Other authors provide evidence when they criticise someone's words or actions, showing where a solecism has been committed. This needs to be treated carefully, because comments on manners and morals were usually made by *novi homines*, and so may reflect the concerns of a limited section of society.<sup>416</sup> For example, Pliny's letters discuss good and bad etiquette in elite society, but they are filtered through his self-promoting agenda and may not be universally representative.<sup>417</sup>

Other evidence provides less obvious information about elite interaction, but is less self-conscious in what it says. When Hall attempted to reconstruct the basis of "good manners" for avoiding affront in the context of the late Republic, he used Cicero's *De Oratore* to provide evidence.<sup>418</sup> He describes strategies of obligation and evasion within the reported conversation, where L. Crassus is

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<sup>416</sup> Edwards 1993: 17-8.

<sup>417</sup> Hoffer 1999: 1-13 on Pliny's "ideal world", 161-76 provides an analysis of *Ep.* 1.13, ostensibly a consideration of good and bad manners at a *recitatio* as a commentary on freedom of speech under Trajan.

<sup>418</sup> Hall 1996.

persuaded to speak, despite his reservations. Hall acknowledges the literary and structural benefits of delaying Crassus' speech, but none the less argues that the *De Oratore* "provides valuable insights into Roman aristocratic values and behaviour. The nuances of what Crassus and his friends say reveal much about the web of social expectation in which such figures were implicated."<sup>419</sup> His method of extrapolating concepts of etiquette from the literary text provides a helpful model. Quintilian repeatedly uses Cicero as an *exemplum* for his budding orator, and while this has the benefit of avoiding discussing too recent behaviour, it also shows that Cicero still exemplified appropriate conduct. The evidence suggests that elite Romans preserved continuity in standards of accepted behaviour, perhaps unsurprising in a conservative society with great respect for the customs and uses of the past.

This chapter will explore the problems of insult and social status in greater depth, arguing that the elite employed strategies to avoid or minimise offence. Managing insult posed a particular difficulty in Rome because the emperor's unique position as *primus inter pares* affected the way he addressed others and their response to him. This chapter will consider imperial status in regard to giving and perceiving insults across the social scale, reserving the related question of freedom of speech in the senate for the next chapter. That creates a somewhat artificial divide between social and political context, but has the merit of allowing greater clarity of discussion. It also sets the scene for chapter 4 by establishing the etiquette which governed exchanges between the emperor and his fellow members of the elite. The final section of this chapter will consider how the Roman elite thought about public and private, and the way that impacted upon their concept of free speech. The Roman elite were routinely surrounded by friends, freedmen and slaves, making the distinction between "public" communication intended for a wide audience and "private" exchanges within a limited circle different from that of the modern, western world. It will be argued

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<sup>419</sup> Hall 1996: 97.

that almost every exchange had an audience and even when that was restricted to a select group, confidentiality relied upon their discretion. The present chapter, in conjunction with the ideas presented in chapter 2, demonstrates the impact of social conventions on freedom of speech in Rome. The hierarchical, competitive nature of elite society created a fear not only of giving or receiving offence, but of being seen to do so. This meant that both censure and self-censorship operated to control what was said between junior and senior parties, and among one's peers.

### 3.2 Insults

It is not difficult to find Romans insulting one another. The elite exchanged abuse, while some emperors behaved outrageously.<sup>420</sup> The people were rude to the elite in the street, among the crowd at the theatre or games, and through graffiti.<sup>421</sup> Orators delivered invective, and students and teachers sparred in the schools of declamation.<sup>422</sup> Dickey, in her detailed study of Latin forms of address, summarises earlier research into Roman insults, noting that they consist of glossaries of terms, or are outdated, and are often limited in scope.<sup>423</sup> They also focus on evidence from comedy or oratorical invective, which we have seen operated under its own protocols. Dickey observes that there are rules about what is considered offensive in any society, and that these are language and culture specific.<sup>424</sup> So, for example, insult is not necessarily determined by a word's lexical meaning and rude terms can be used as endearments. The "register" of a term also matters – the different types of language appropriate for different situations – so that it is possible to use the high register of literary language and

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<sup>420</sup> E.g. Sen. *Controv.* 10. pr.7, Titus Labienus was so rude he was nicknamed "Rabienus". Outrageous imperial behaviour at Suet. *Tib.* 57.2, 61; *Calig.* 23, 24, 26, 29, 31, 35.

<sup>421</sup> See chapter 5 for discussion of popular protest.

<sup>422</sup> E.g. Sen. *Controv.* 3. pr.16-17, Cassius Severus describes mocking Cestius before the praetor "ad praetorem voco et cum quantum volebam iocorum conviciorumque effudissem, postulavi ut...". *Controv.* 4. pr 11 and 7 pr 9 – 11 for sparring in the schools.

<sup>423</sup> Dickey 2002: 163-7.

<sup>424</sup> Dickey 2002: 167-71.



still be deliberately offensive. Dickey acknowledges the complexity of this, and the difficulty for constructive discussion. She adds: “Since offensiveness relates to the extent to which the speaker wishes to injure the addressee, it can be determined by examining the temperature of the debate in which an insult is used and the relationship of the speaker and addressee.”<sup>425</sup> She then provides a table of Latin direct insults, with their register, and the number of times they occur. She notes that sexual insults and ingratitude appear to be especially offensive.<sup>426</sup>

Dickey’s sensible approach analyses examples where someone is addressed directly, though the conventions of genre may raise some questions about reliability. She discusses Martial’s mockery of Sosibianus for addressing his father as *domine* and suggests several scenarios for why this was infelicitous.<sup>427</sup> It may have been originally a low register term used by younger people to older relatives, which was then contaminated by an amatory use, suggesting an inappropriate sexual relationship. An alternative theory is that it was in general sub-literary use as a polite term to address a comparative stranger. This would emphasise the unfamiliarity between the two men. Her final suggestion is that Martial may have been forcing the audience to make the connection between the lexical meaning of *dominus* as “master” and the address meaning of *domine* as “sir”. This forces the reader to see an association they might otherwise miss, just as in modern English “darling” can be used as an endearment or a general term of address, creating an inconsistency between the two forms that can get well-intentioned bus drivers into trouble.<sup>428</sup> Dickey favours the last solution, but perhaps the most useful aspect of her argument is that it shows how little we know. *Dominus* is controversial elsewhere, with Tiberius refusing to accept the

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<sup>425</sup> Dickey 2002: 171, with table of insults following at 173-6.

<sup>426</sup> Dickey 2002: 183.

<sup>427</sup> Dickey 2002: 87-94. Mart. 1.81. a servo scis te genitum blandeque fateris/ cum dicis dominum Sosibiane, patrem.

<sup>428</sup> Bus drivers in Brighton and Hove are told not to call customers babe, sweetheart or darling. See [www.theargus.co.uk/news/9501438.Bus\\_drivers\\_told\\_to\\_cut\\_babe\\_greeting/](http://www.theargus.co.uk/news/9501438.Bus_drivers_told_to_cut_babe_greeting/) accessed 21/11/2012.

term and Domitian claiming it.<sup>429</sup> Dickey acknowledges that the “grammar” of insult in any language is internalised by its native speakers, so that they automatically understand the register and relative offensiveness of a term which may escape an external commentator. Dickey’s approach provides useful evidence for terms of address and of how someone could give deliberate, direct offence. It leaves open the question of how the Romans dealt with more complex insults, and the difficulties created by inadvertent offence, where a remark was not intended as an insult.

The elite sources record the exchange of insults between members of the Roman elite, but they are often reluctant to repeat them directly.<sup>430</sup> Pliny describes an angry exchange in the senate between Licinius Nepos and Juventius Celsus, and says explicitly that they did not restrain themselves. However, Pliny himself found their words offensive and does not wish to repeat them.<sup>431</sup> Richlin’s argument that Romans avoided explicitly obscene language because it “stained” the speaker’s mouth was discussed in chapter 2 and reluctance to record insult may reflect this prejudice about what can decently be reported.<sup>432</sup> Literary considerations may, however, be more important, since reporting insult lowers the tone. When Tacitus recounts the trial of Votienus Montanus, described as *vir celebris ingenii*, he does not record his insults against the emperor. Instead, he tells us about the unfortunate candour of the military witness and Tiberius’ fear of hearing abuse during public appearances. That allows the reader to supply the missing information from the context. It avoids the tedium of repeated insults, and focusses the account on Tiberius’ outrage. The audience’s conjectures may

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<sup>429</sup> Suet. *Tib.* 27. Mart. 10.72 rejoices at no longer having a *dominus* at Rome.

<sup>430</sup> This is common phenomenon. See for example: Cass. Dio 54.30.4, 58.1, 59.4, Suet. *Aug.* 56, *Tib.* 28, 66, Tac. *Ann.* 15.68, *Hist.* 1.47. Overt insults between the Roman elite are reported relatively rarely, although Cic. *Fam.* 7.27 roundly denounces T. Fadius, and Plut. *De auditu* 15 suggests a possible form of words for rebuking bad manners in the recitation hall. Plin. *Ep.* 1.13 complains of bad behaviour at recitations, but does not rebuke the offenders directly.

<sup>431</sup> Plin. *Ep.* 6.5.4. Iuventius quidem Celsus praetor tamquam emendatorem senatus et multis et vehementer increpuit. respondit Nepos rursusque Celsus; neuter contumeliis temperavit. nolo referre quae dici ab ipsis moleste tuli.

<sup>432</sup> Richlin 1992: 18-31. For discussion of Roman concepts of obscenity, see chapter 2.

be even worse than anything the author directly reports. This is a clever and dignified treatment, which does not spare the emperor but retains the high tone.

Suetonius, as a biographer, is less reluctant to report insult directly. For example, he repeats Julius Caesar's obscene threats, and the resulting exchange of insults in the senate:

quo gaudio elatus non temperavit, quin paucos post dies frequenti curia iactaret, invitis et gementibus adversariis adeptum se quae concupisset, proinde ex eo insultaturum omnium capitibus; ac negante quodam per contumeliam facile hoc ulli feminae fore, responderit quasi adludens: in Suria quoque regnasse Sameramin magnamque Asiae partem Amazonas tenuisse quondam.

Transported with joy at this success, he could not keep from boasting a few days later before a crowded house, that having gained his heart's desire to the grief and lamentation of his opponents, he would therefore from that time mount on their heads; and when someone insultingly remarked that that would be no easy matter for any woman, he replied in the same vein that Semiramis too had been queen in Syria and the Amazons in days of old had held sway over a great part of Asia.<sup>433</sup>

That this appears more suited to a rugby (harpastum?) club dinner than an exchange in the senate is precisely the point. Repeating the insults furnishes a good story, so they are easily remembered and circulated. Directly reporting the insults lowers the tone, so that his account lacks the *gravitas* that Tacitus achieved by recording the fact of insult but omitting the detail.

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<sup>433</sup> Suet. *Iul.* 22.2 2 "insultaturum omnium capitibus" is used euphemistically for *irrumare*; see Adams 1982: 124-30. Corbeill 1996: 195-6; Richlin 1992: 149-59 discuss aggressively humorous exchanges in which the term is employed.

Insult posed potential problems for the speaker as well as his target. Cicero was concerned that his brother's irritability and rudeness might damage his reputation, and warned him against sending any more insulting letters, as enough damage had been done.<sup>434</sup> Cicero gives examples and adds that he should destroy letters that might cast him in a bad light because they are unfair, unjust or contradictory (*epistolae iniquae, iniustates, contrariae*).<sup>435</sup> Quintilian advises the young orator that insults should be used cautiously because of the risk to one's dignity and of giving offence.<sup>436</sup> The problem was not only that the target would be angry, but that a devastating response made the speaker look foolish. The elder Seneca and Quintilian both record examples of particularly witty and memorable ripostes which enhanced someone's reputation at the expense of the original speaker.<sup>437</sup>

Pliny provides an example which shows the importance of responding adroitly to an awkward remark. When a certain Paulus was reciting his elegaic:

is cum recitaret, ita coepit dicere: 'Prisce, iubes...'. ad hoc  
Iavolenus Priscus (aderat enim ut Paulo amicissimus) 'ego vero  
non iubeo.'

[H]e began with the words, "Priscus, you command me..." At  
this, Javolenus Priscus, who was there as a close friend of Paulus,  
broke in: "But I do not command you."<sup>438</sup>

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<sup>434</sup> Cic. *Q. fr.* 1.1 37-41.

<sup>435</sup> Cic. *Q. fr.* 1.2.8-9.

<sup>436</sup> Quint. *Inst.* 2.12.5.

<sup>437</sup> E.g. Quint. *Inst.* 6.3.71-94; Sen. *Suas* 3. 2-12, 4. 4-5. While not precisely an insult, Quint. *Inst.* 6.1.43 has a pleasing story of how a riposte could be used to a speaker's detriment. A young man read his speech from a manuscript and asked Cassius Severus why he was scowling. Severus replied that he certainly was not (*non mehercule faciebam*) but since that was what was written, he obliged with a ferocious glare (*quam potuit truculentissime eum aspexit*). The young man presumably emerged sadder and wiser from the encounter.

<sup>438</sup> Plin. *Ep.* 6.15.2. Sherwin-White 1966: 370 notes Priscus Javolenus' career and that this is an unusual example of Pliny criticising a living person. Courtney 1993: 371 speculates about the point of the interruption, suggesting that the "eccentric and literal minded jurist" was not co-operating with the literary scenario of a friend or patron directing the poet.

This is met with general hilarity, but Pliny does not view the incident as amusing. His criticism of Priscus as “slightly mad” (*est omnino Priscus dubiae sanitatis*) is surprising, since he was a distinguished lawyer and experienced governor, and it is at least possible that Pliny’s disapproval springs from rivalry. However, his judgement about inappropriate speech is not reserved for the joker:

interim Paulo aliena deliratio aliquantum frigoris attulit. tam sollicite recitaturis providendum est, non solum ut sint ipsi sani verum etiam ut sanos adhibeant.

Meanwhile, the eccentric behaviour of another brought Paulus a lukewarm reception. So people intending to offer a recital should ensure not only that they themselves are sound in mind, but also that the audience they invite are, too!<sup>439</sup>

Pliny presents both men as adversely affected by the incident, because the recitation degenerated into farce. Paulus failed to come up with a witty rejoinder that might have saved the situation.

### 3.3 Insults and social status

The elder Seneca underlines the stark realities of power relations in imperial Rome. The subject for one declamation has a rich man assumed to have killed a poor man for insulting him.<sup>440</sup> The low status of the victim’s son allows limited redress. Suetonius reports, with disapproval, that Nero’s father Domitius Ahenobarbus, struck out a freedman’s eye for speaking too freely in a dispute.<sup>441</sup> The younger Seneca advises bearing cheerfully with wrongs done by the powerful, so they will not be encouraged to repeat the insult. The implication is

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<sup>439</sup> Plin. *Ep.* 6.15.4.

<sup>440</sup> Sen. *Controv.* 10.1.

<sup>441</sup> Suet. *Ner.* 5.1.

that they both can and will do so. Survival in royal service is ascribed to “suffering wrongs and saying thank you”.<sup>442</sup>

However, there are some circumstances when insults were tolerated. Dio describes a Gaul calling Gaius “a big humbug” (μέγα παραλήρημα) and escaping without harm, because he was a shoemaker.<sup>443</sup> Dio draws the moral:

οὕτω που ῥῶον τὰς τῶν τυχόντων ἢ τὰς τῶν ἐν ἀξιώσει τινὶ ὄντων  
παρρησίας οἱ τοιοῦτοι φέρουσι.

Thus it is, apparently, that persons of such rank as Gaius can bear the frankness of the common herd more easily than that of those who hold high position.<sup>444</sup>

There are other examples of humble people speaking openly to and about their superiors without suffering harm. Indeed they are envied for being able to do so.<sup>445</sup> Two strands of thought seem interwoven. Firstly, there is a view that ordinary people like this Gaul are “*simplex*”, which means they lack the sophistication that would enable them to express insult without dissembling. The simple nature of the Gauls seems to be used almost proverbially, and as a result, they were among those that received a certain amount of licence and even amused toleration.<sup>446</sup> For example, Quintilian says that:

nam in convictibus et cotidiano sermone lasciva humilibus, hilaria omnibus convenient.

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<sup>442</sup> Sen. *De Ira* 2.33.1-2.

<sup>443</sup> Cass. Dio 59.26.8-9.

<sup>444</sup> Cass. Dio 59.26.9.

<sup>445</sup> Tac. *Ann.* 1.7.1, 14.60.5.

<sup>446</sup> E.g. Suet. *Ner.* 45.2 graffiti that Nero had upset “even the Gauls” by his singing; Mart. 3.1 even a Roman-born house slave is better than a free Gaul (with a pun on *liber*).

On social occasions and in daily conversation, risqué jokes will suit the lower ranks of society, comical jokes will suit everyone.<sup>447</sup>

This attitude is reflected in law, since certain people were not believed capable of giving offence.<sup>448</sup> Children and the mentally handicapped fell into this class, while Seneca describes the insulting wit (*contumeliosa*) of slaves as amusing, provided it begins with their masters.<sup>449</sup>

Secondly, such people were tolerated because their insults posed no threat. Where there is a large variation in the relative status of the two parties, magnanimity serves to emphasise that the superior's standing is so great that he cannot be harmed by insults from his inferiors. This was a favourite strategy of both Augustus and Vespasian, who implicitly underline their own superior status in this way.<sup>450</sup> Dio disapproves when Tiberius shows that he had understood insults against him. It would have been better to pretend not to realise the implications and take no notice.<sup>451</sup>

Misinterpreting insults, and therefore failing to understand that there were grounds for offence, was not a tactic confined to emperors. Ignoring an insult was a potentially successful means of avoiding a difficult situation because it allowed relations to remain cordial between the parties. This was so important that inferiors actively created situations where misinterpretation was possible. Quintilian suggests that when documentary evidence proves false it should be ascribed to ignorance on the part of the signatories, rather than fraud.<sup>452</sup> Similar suggestions are made about the use of euphemisms which allow all present to

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<sup>447</sup> Quint. *Inst.* 6.3.28.

<sup>448</sup> Dig. 47.10.3.

<sup>449</sup> Sen. *Constant.* 11.3. eadem causa est, cur manciporum nostrorum urbanitas in dominos contumeliosa delectet, quorum audacia ita demum sibi in convivas ius facit, si coepit a domino.

<sup>450</sup> E.g. Suet. *Aug.* 5, 55; *Vesp.* 13.

<sup>451</sup> Cass. Dio 57.23.

<sup>452</sup> Quint. *Inst.* 5.5.1.

ignore inconvenient realities: luxury can be described as generosity, avarice as economy, carelessness as simplicity.<sup>453</sup>

A variation on this strategy of offering the opportunity to misinterpret insult, even if it meant massaging the facts into a more palatable version, occurs in Cicero's letters. In 50 BC, it was proposed in the senate that Cicero should be awarded a *supplicatio* for his military success against the Parthians while governor of Cilicia. Cato's opposition to this was an insult, and he wrote to Cicero to explain his actions.<sup>454</sup> Shackleton Bailey argues that "It was obviously not an easy letter to write. ... It would have been more in keeping with the accredited character of the writer if he had defended his opposition as a matter of principle instead of resorting to ... humbug."<sup>455</sup> However, this may not quite reflect the subtleties involved. Cicero was able to make a courteous response, accepting Cato's implicit good will, so it seems more likely that any awkwardness arises not from self-consciousness at writing "humbug" but because Cato is aware he is re-positioning the reality.<sup>456</sup> The insult caused by his vote against Cicero is presented as a minor awkwardness, one barely worth noticing given his regard for Cicero's prestige (*maiestas*). Since there has been no open disagreement, good relations have been preserved. In this case, we can see that this was a deliberate strategy, because Cicero is more open about his views when he writes to Atticus. Although he initially presents a neutral account of events, he later writes in far more assertive terms, describing the denial of the *supplicatio* (and therefore Cato's vote) as a "humiliation" (*dedecus*).<sup>457</sup> The situation has been managed by accepting Cato's face-saving misinterpretation; that does not mean it has not been perceived and Cicero's letter to Atticus reveals his anger. The problem is not only Cato's conduct, but that Caesar has written about it to Cicero, who detects gloating. Caesar's letter brings the situation into

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<sup>453</sup> Quint. *Inst.* 4.2.77.

<sup>454</sup> Cic. *Fam.* 15.5.

<sup>455</sup> Shackleton Bailey 1968: 449.

<sup>456</sup> Cic. *Fam.* 15.6.

<sup>457</sup> Cic. *Att.* 7.1.5-7. 7.2..6-7. [Cato] in me turpiter fuit malevolus.



the open and Cicero interprets this as damaging to his status. If he can, he tells Atticus, he will take steps to redress the situation, though he is not able to suggest exactly how this can be done.<sup>458</sup>

Ignoring or misinterpreting insult was successful as long as it could be done convincingly. The elder Seneca describes an incident when the strategy failed, embarrassing Porcius Latro. Latro accidentally insulted Marcus Agrippa in the course of a declamation by referring to his humble origins, and therefore those of Augustus' grandsons.<sup>459</sup> Both Agrippa and Augustus were present, as was Maecenas. He signalled to Latro to conclude his remarks, and so drew attention to the situation. Some, Seneca says, thought that this was done maliciously, so that Augustus could not ignore the insult. The only way to save face was for Latro himself to continue to appear unaware of what had happened. Apologising would make the situation worse and Seneca has considerable sympathy for Latro's predicament. Ignoring insults worked if it could be believed that the recipient had not noticed them. Once the reality of the situation was forced into open view, redress had to be sought to avoid damage to one's reputation.

### 3.4 Status, criticism and reproof

A member of the Roman elite had friends of varying status, and this affected strategies for managing criticism. Criticism is perilously close to insult, because of its potential to offend and to damage status. Habinek explores this in the context of Cicero's letters, suggesting that the "junior" friend could criticise his senior more safely than an equal or a superior, because the disparity in status made his remarks less threatening. Habinek argues that Cicero's letters manipulate relative standing between friends for his own political purposes.<sup>460</sup> This fits well with the concept that showing tolerance towards inferiors was an

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<sup>458</sup> Cic. *Att.* 7.2.7 itaque Caesar iis litteris quibus mihi gratulatur et omnia pollicetur quo modo exultat Catonis in me ingratis iniuria! ... ignosce mihi: non possum haec ferre nec feram!

<sup>459</sup> Sen. *Controv.* 2.4.12-13.

<sup>460</sup> Habinek 1990.

effective way of demonstrating high status, discussed above. Plutarch's concerns over distinguishing a dangerous flatterer from a helpful friend reflect similar concerns with friendship, criticism and status. The junior friend's role was not an easy one, and training in how to give and receive reproof safely started in the schoolroom. Quintilian's ideal teacher is himself a good man, who trains his pupils by accentuating the positive. Sarcasm and abuse are not desirable when correcting students because they will take him in dislike. A popular teacher will inspire and encourage his students to imitate his good conduct.<sup>461</sup>

Plutarch provides further evidence when he advises Nicander on making the most of his education. He is told to listen humbly and avoid answering back.<sup>462</sup> Plutarch was writing for a young man intending to study philosophy rather than oratory and for a provincial audience, so that his world was removed from the Roman elite. Nonetheless, it is informative that rebukes should neither be ignored and scoffed at nor taken so much to heart that the hearer runs away in shame.<sup>463</sup> Plutarch provides advice on receiving even an unjust reproof:

καὶ γὰρ ὁ ἐν ἀδίκῳ ἢ ἐπιτίμῃσι γίνεσθαι δοκῇ, καλὸν  
ἀνασχέσθαι καὶ διακατερεῖσθαι λέγοντος: παυσάμεν δ' αὐτὸν  
ἐντυχεῖν ἀπολογούμενον καὶ δεόμενον τὴν παρηρησίαν ἐκείνην καὶ  
τὸν νόμον, ὃ νῦν κέχρηται πρὸς αὐτὸν, εἰς τι τῶν ἀληθῶς  
ἀμαρτανομένων φυλάττειν.

it is an admirable thing to endure it with continued patience while  
the man is speaking; and when he has come to the end, to go to  
him with an explanation, and beg him to reserve for some real

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<sup>461</sup> Quint. *Inst.* 2.2.5-8.

<sup>462</sup> Plut. *De auditu* 3, 4, 6.

<sup>463</sup> Plut. *De auditu* 16. Both Plutarch and Quintilian are aware that not all students accept strictures meekly; Quintilian advises on handling the stubborn student, *Inst.* 2.6.3-4.

misconduct the frankness and earnestness that he has employed in the present instance.<sup>464</sup>

It might be tempting to dismiss these as idealised views, appropriate for students, but not for adult life. However, Pliny writes in response to a letter from his grandfather-in-law, and what he says fits this paradigm almost exactly.<sup>465</sup> He begins by stating his willingness to help Fabatus' protégé, and there is a strong suggestion that the older man has expressed criticism fairly freely:

epistularum, quas mihi ut ais 'aperto pectore' scripsisti, oblivisci me iubes:

You bid me forget the letters which you wrote, as you put it, "with the heart's candour".

Pliny acknowledges the implied criticism and Fabatus' status:

ex illis enim vel praecipue sentio, quanto opere me diligas, cum sic exegeris mecum, ut solebas cum tuo filio.

they make me realise as never before how much you love me, when you make the same demands on me as you used to on your own son.

He goes on to offer an explanation that there was in fact no fault to answer:

nec dissimulo hoc mihi iucundiores eas fuisse, quod habebam bonam causam, cum summo studio curassem quod tu curari volebas.

I admit my pleasure was increased by knowing I had a good case: I had already done my best to carry out your request.

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<sup>464</sup> Plut. *De auditu* 16.

<sup>465</sup> Plin. *Ep.* 6.12.

Pliny ends his letter by saying:

proinde etiam atque etiam rogo, ut mihi semper eadem  
simplicitate, quotiens cessare videbor ('videbor' dico, numquam  
enim cessabo) convicium facias, quod et ego intellegam a summo  
amore proficisci, et tu non meruisse me gaudeas.

I do beg you then most earnestly to reprove me with the same  
frankness whenever I seem to fail in my duty (I say 'seem'  
because I never really shall fail). I shall understand that real  
affection prompts your reproaches and you shall be glad to find I  
did not deserve them.<sup>466</sup>

The formula of endurance, explanation and earnest desire for frank discussion of faults has served Pliny well here. He has in fact made no real concession to Fabatus, but has successfully shown deference towards the older man. That is important, since Fabatus was owed respect by virtue of age and connection through marriage. Mishandling this relationship would reflect badly on Pliny, who avoids the trap, and instead emphasises the family tie that unites them. His approach here shows that notions of etiquette imparted in the schoolroom were indeed recognised as appropriate in the adult world.

Recent work has considered both the position of individual letters within the books and the relationships of themes within the books.<sup>467</sup> In the example discussed above, Pliny was defending himself against criticism for failing to provide support requested on someone else's behalf. Elsewhere, Pliny is found recommending friends for office or canvassing on behalf of others.<sup>468</sup> One of these is letter 6.6, in which Pliny writes to Fundanus about the exemplary Julius Naso. Its position in relation to his reply to Fabatus at 6.12 is surely no co-

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<sup>466</sup> Plin. *Ep.* 6.12.5.

<sup>467</sup> For recent discussion of the significance of the arrangement of the letters, see for example Marchesi 2008, Gibson and Morello 2012.

<sup>468</sup> E.g. Plin. *Ep.* 2.13, 5.14, 6.6.

incidence, since it means that Pliny has already reminded his audience how one ought to write a letter supporting a junior friend.<sup>469</sup> Pliny tells Fundanus:

si quando, nunc praecipue cuperem esse te Romae, et sis rogo.  
opus est mihi voti laboris sollicitudinis socio. petit honores Iulius  
Naso; petit cum multis, cum bonis, quos ut gloriosum sic est  
difficile superare.

Now if ever I should like your presence at Rome and I beg you to  
be there. I need a comrade to share my prayer and toil and  
anxiety. Julius Naso is a candidate for office, along with many  
other good candidates, so that it is difficult to succeed, but imparts  
distinction.<sup>470</sup>

This is presented in terms of a compliment to Fundanus' own status. Pliny suggests that Fundanus' moral authority is so great he can only bring benefit to the campaign:

ea est auctoritas tua, ut putem me efficacius tecum etiam meos  
amicos rogaturum.

Such is your authority that I believe that I will importune even my  
own friends more effectively if you are with me.<sup>471</sup>

Pliny also manages to remind us about the danger involved, because if a candidate did badly, his sponsor lost face. Pliny presents this as a game of relative status and a risky one at that. It may be that the stakes are not as high as Pliny suggests, but if we take him at his own evaluation, Fabatus' letter of criticism begins to seem rather gauche. By providing this wider context, Pliny repositions the situation so that Fabatus' criticism reveals his lack of

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<sup>469</sup> Gibson and Morello 2012: 63.

<sup>470</sup> Plin. *Ep.* 6.6.1.

<sup>471</sup> Plin. *Ep.* 6.6.8.

understanding of his grandson-in-law's sophisticated world. Pliny is someone who himself recommends excellent candidates, supported by men of great *auctoritas*, and whose prestige relies on their success. Fabatus' criticism is shown to be ill-judged and Pliny's response correspondingly more gracious.

Pliny has demonstrated how to handle a rebuke by his grandfather-in-law. When it comes to administering a reproof, Pliny's letter to Geminus provides an example of how it should be done. Geminus has asked for a dedication of one of Pliny's works. His letter is praised and the request acknowledged. However, there is a problem:

obveniet materia vel haec ipsa quam monstras, vel potior alia. sunt enim in hac offendicula non nulla: circumfer oculos et occurrent.

A suitable topic will occur to me, either the one which you indicate or something else more suitable, since your suggested topic contains comments of a slightly offensive nature. Take a look and they will strike you.<sup>472</sup>

What can have been offensive? Pliny allows the reader no clue, and suggests that Geminus' social sense is so finely attuned that he will realise his error when he looks again. Since the mistake is slight and inadvertent, Pliny can comply with the request, leave the issue and end the letter with unimpaired cordiality. However, Geminus has offended and by publishing that fact and his own reproof, Pliny has maintained the upper hand in the exchange.

The philosopher Epictetus was a former slave, probably of the imperial household, who set up a school of philosophy at Nicopolis. The historian Arrian circulated notes taken at his lectures. This has the advantage that it provides a "snapshot" view, rather than the polished self-presentation of Pliny's letters. When Epictetus reprimands a young man over his effeminate dress and hairstyle,

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<sup>472</sup> Plin. *Ep.* 9.11.1.

he provides a master class in rebuke and status.<sup>473</sup> Epictetus takes the youth through a form of Socratic dialogue to establish that true beauty lies in excellence and moderation, but he is on dangerous ground. Although he has standing as a teacher of philosophy, he is the social inferior of his students. Offending them could have unpleasant repercussions. So he deals with the problem by acknowledging the situation with apparent frankness, and claiming that it is his duty as a philosopher to speak out. The student would only have grounds to complain if Epictetus made excuses for him rather than correcting the fault.

τὴν μὲν κόμην ἡδύνατό μου διορθῶσαι, τὰ μὲν περιάμματα μου περιελεῖν, ψιλούμενόν με παῦσαι ἡδύνατο, ἀλλὰ βλέπων με — τίνοσ εἶπω; — σχῆμα ἔχοντα ἐσιώπα.’ ἐγὼ οὐ λέγω, τίνοσ ἐστὶ τὸ σχῆμα τοῦτο: σὺ δ’ αὐτὸ ἐρεῖς τόθ’, ὅταν εἰς σαυτὸν ἔλθῃς, καὶ γνῶσκει, οἷόν ἐστι καὶ τίνες αὐτὸ ἐπιτηδεύουσι.

[Epictetus] could at least have set my hair right, he could have stripped me of my ornaments, he could have made me stop plucking my hairs; but although he saw me looking like – what shall I say? – he held his peace. As for me, I do not say what it is you look like, but you yourself will say it when you come to yourself and will realise what it is and the kind of people those are who act this way.

Epictetus puts the formula for accepting rebuke into the student’s own mouth, distancing himself from it, and suggesting that the student will in due course acknowledge its force. The insult is lessened because the accusation is not made overt. The implication that the young man is acting out of innocence rather than depravity also softens the rebuke. And Epictetus employs a further distancing

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<sup>473</sup> Epictetus, *Discourses* 3.1. Lines quoted 3.1.14-15. For Roman attitudes towards luxuriousness and effeminacy, see for example Edwards 1993: 63-96.

effect by claiming that the young man will realise that it would never occur to Epictetus himself to criticise anyone like this; he is the mouthpiece of a beneficent deity. These strategies allow criticism to be delivered without causing offence.

Criticism could be made more palatable by using flattery, and both Plutarch and Quintilian suggest criticising the most important aspect of the problem and ignoring trivialities.<sup>474</sup> If possible criticism should be made about someone else, and the target left to draw his own conclusions about its applicability. Pliny offers a variation on this theme when he claims that witnessing another father's harsh treatment of a son leads him to advise Junior to treat his child leniently.<sup>475</sup> If this strategy cannot be employed, then the problem should be presented as one flaw amidst other excellent qualities, which should be duly praised. Lendon's view of praise as a "currency" among the elite has been discussed in chapter 2, and it offered a face-saving strategy that could be used to minimise the effects of delivering a rebuke. Pliny uses this technique skilfully, writing that although he has been criticised for over-generous praise, he prefers this to disparaging his friends as others do theirs.<sup>476</sup> The cynical reader may wonder if anyone has really reproached Pliny for this, but whether true or not, countering the allegation allows him to underline his own virtue because he values his friends so highly. He also creates a situation where any reproof is expressed within the context of his open admiration of his friends.

Criticising someone was a fraught process for the Roman elite because of its potential to create resentment or backfire on the speaker. It was easier for a junior friend to criticise a senior, but even so, considerable tact and circumlocution were required. The evidence suggests that strategies for

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<sup>474</sup> Quint. *Inst.* 7.2.32-4; Plut. *Adulator* 35.

<sup>475</sup> Plin. *Ep.* 9.12.

<sup>476</sup> Plin. *Ep.* 7.28.



delivering criticism safely were subtle and indirect, and learned from an early age.

### 3.5 Imperial status and insult

The evidence about freedom of speech and imperial status is concerned both with the *princeps*' political position in the senate, and his social position as a member of the elite. Talbert notes the emperor's "social contacts remained almost exclusively confined to the senatorial class and certain closely related *equites*. The affable emperor visited them when they were sick, invited them to dinner, and accepted invitations in return. Predictably, senators responded well to such imperial civility."<sup>477</sup> The line between social and political success was a fine one. It was from these men that the emperor selected his advisors, the so-called *consilium principis*, although this is not a contemporary term.<sup>478</sup> Rather, those close to the emperor are described as *amici* and this must be understood not as a personal "friend" (*familiaris*), but rather as a more formal business relationship.<sup>479</sup> Inviting trusted intimates to act as advisors was a republican practice.<sup>480</sup> The distinction, of course, was that the emperor's political role was unique, and his decision on any subject was final. By their nature, meetings of the emperor and his *amici* have left little trace in the historical record. Dio says this explicitly.<sup>481</sup> There are hints that some emperors were better at selecting and listening to their *amici* than others. Juvenal satirises a *consilium* held to advise Domitian on finding a dish for a turbot.<sup>482</sup> His description of the council members focusses upon their helplessness and hatred, and speeches by Catullus and Veiento parody those appropriate for a more serious occasion. Finally, the

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<sup>477</sup> Talbert 1984:163.

<sup>478</sup> Crook 1955: 3.

<sup>479</sup> Crook 1955: 21-5. Crook notes use of the term *comes* for companions on a journey and *cohors similis* for the emperor's wider entourage. Rudich 1993: xxvii-i on the lack of precise definition of the role and status of *amici principis* and the skill needed to survive it. Millar 1977: 11 on lack of definition of *amici*.

<sup>480</sup> Crook 1955: 7.

<sup>481</sup> Cass. Dio 53.19.

<sup>482</sup> Juv. 4. 73-5.

council are dismissed and Juvenal draws the moral that even if this was a waste of time, it was better than Domitian turning his attention to more serious matters.<sup>483</sup> Care is needed when satire is used to inform understanding of historical events, and other accounts of emperors turning to trivial matters in a crisis are not much more satisfactory. Nero is described exhibiting new forms of water-organs to his *amici* instead of consulting them about Vindex's revolt.<sup>484</sup> The story about Gaius summoning consulars to the palace at night and dancing for them is similar in tone.<sup>485</sup> In contrast, when Pliny describes his experiences as one of a group of assessors for Trajan, he praises the emperor's excellent character and worthy decisions.<sup>486</sup> Trajan was concerned with appropriate business and demonstrated sincerity and competence. However, this also reflects well on Pliny as his *amicus* so that it does not provide an objective account.

Some scholars have suggested that advisors were employed to manipulate the senate as a whole. For example, Augustus set up a standing committee to prepare business before the senate met.<sup>487</sup> Crook suggests that this was to prevent the senate from complaining it had no influence on proceedings, and allow the consuls to consult with the emperor before meetings.<sup>488</sup> There is so little evidence that it is difficult to assess the impact of this council; even the dates of its operation are conjectural.<sup>489</sup> More significant is that it lapsed after Augustus' death, suggesting that neither Tiberius nor its members were entirely comfortable with such a constitutional novelty.

When Vespasian was disgraced for falling asleep during Nero's performances, the penalty illustrates the role of the emperor's entourage in power relations. He experienced progressive banishment, first from the emperor's inner circle, then

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<sup>483</sup> Juv. 4. 144-54.

<sup>484</sup> Suet. *Ner.* 41.2; Cass. Dio 63.26.4-5.

<sup>485</sup> Suet. *Calig.* 54.2, Cass. Dio 59.5.5.

<sup>486</sup> Plin. *Ep.* 6.31.

<sup>487</sup> Cass. Dio 53.21.4-5; Suet. *Aug.* 35.3.

<sup>488</sup> Crook 1955: 7-11.

<sup>489</sup> Talbert 1984: 167; Crook 1955: 11.

from public receptions.<sup>490</sup> Access to the emperor's person was the key to influence, and association with the emperor was a way to gain influence and reward. Claudius' principate is sometimes presented as marking a shift to a "palace culture" or "court" with the influence of his wives and freedmen central to brokering power. Various arguments are put forward for this: difficulties in his relationship with the senate, where he was given the least prestigious position of speaking last during Gaius' principate, or a lack of preparation for public position so that he was more accustomed to palace life.<sup>491</sup> There are signs, however, that it merely continues a pre-existing trend. Millar notes that the lack of publicly appointed officials meant that it was natural for the emperor to turn to his own freedmen, and that the period of their influence is a short one, the middle of the first century AD. After that, equestrian posts become increasingly important in imperial administration.<sup>492</sup> Wallace-Hadrill argues that the emperor's unique role as ultimate patron led to his household becoming supremely influential, and a locus of gossip. This therefore increased the influence of non-senators, so that dynastic faction and palace intrigue became politically dangerous.<sup>493</sup> Wallace-Hadrill argues for a complex, undefined membership, with proximity to the emperor's person as key to influence, and possessing "essential ambiguity ... as an institution in a private household with a central role in public life".<sup>494</sup> It is surely correct to imagine complex and subtle undercurrents affecting freedom of speech for those that surrounded the emperor and depended on his good will, though the evidence is scanty. The impact of gossip will be discussed in chapter 5.

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<sup>490</sup> Suetonius, *Vespasian* 4.

<sup>491</sup> Suetonius, *Claudius* 9.2. Dio 60.3 adds that "he had been wronged and insulted both because he had been held in no esteem, and also, more especially, in order to please either Tiberius or Gaius". See also Dio 65.11. Levick 1990. Wallace-Hadrill 1982 has a similar argument.

<sup>492</sup> Millar 1977: 52-61.

<sup>493</sup> Wallace-Hadrill 1996: 284-6.

<sup>494</sup> Wallace-Hadrill 1996: 287.

The emperor's household was based on the model of a Republican aristocrat.<sup>495</sup> This precedent extended to his social relationships with the elite, and both Cassius Dio and Suetonius describe Augustus rushing from the senate to avoid insulting others.<sup>496</sup> This is presented as an example of liberal behaviour because he does not publicly rebuke the senators who have provoked him nor impair his dignity by an angry or excessive response. In fact, his behaviour accords with elite strategies for limiting insult and offence, as discussed above. It also marks his exceptional status, because leaving the senate was not usually acceptable. Augustus explains his action as incorrect but expedient, since he avoided being compelled to do something harsh.<sup>497</sup> There were Republican role models for individuals whose personal *auctoritas* set them outside the usual rules of acceptable behaviour. Pliny has an anecdote about Cato being discovered while drunk, which embarrassed the onlookers, but not Cato himself. Like Cato, Augustus' *auctoritas* is so great that he can behave "incorrectly" and still emerge with his reputation enhanced.<sup>498</sup> However, there is a crucial difference because the accounts emphasise that his mild response is a matter of personal choice, with the implied possibility that the *princeps* might act more severely. This ambiguity over imperial status and uncertain response pervades the elite's relationship with the emperor.

The importance of the imperial *domus* means that Scott's model of a "theatrical imperative" seems helpful for understanding the issues of control and suppression in how the emperor was addressed. Scott argues that dominant parties dictate roles and lines to subordinates, who are forced to play along and follow a "public transcript" which reflects the official version of events.<sup>499</sup> He suggests that a disparity of power leads to a "performance of respect" where

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<sup>495</sup> Wallace-Hadrill 1996: 288.

<sup>496</sup> Suet. *Aug.* 54; Cass. Dio 54.27.4 Chapter 4.4 further discusses imperial response to political criticism in the senate.

<sup>497</sup> Cass. Dio 54.27.4

<sup>498</sup> Wallace-Hadrill 1982. Lendon 1997: 31 presents a similar argument for persons with reputations for honour being able to act outside social rules.

<sup>499</sup> Scott 1990: 3-5.

emotion is suppressed, extreme politeness is used, and people are reluctant to make jokes or say anything which might give offence.<sup>500</sup> Scott offers two alternative outcomes for people in this situation, basing his arguments on sociological models. Either the strain of co-operating with the required performance leads the speaker to burst out with their real feelings, or the “mask comes to fit”.<sup>501</sup> There is evidence that appears to fit this pattern. According to Tacitus, when Britannicus died at an imperial banquet, those who understood the implications remained seated, waiting for Nero to show them the desired response. Nero ascribed the attack to epilepsy, and the company accepted it. Britannicus’ sister Octavia was present and Tacitus reports:

Octavia quoque, quamvis rudibus annis, dolorem caritatem omnes  
adfectus abscondere didicerat. ita post breve silentium repetita  
convivii laetitia.

Octavia too, youth and inexperience notwithstanding had learned  
to hide her griefs, her affections, her every emotion.

Consequently, after a short silence, the amenities of the banquet  
were resumed.<sup>502</sup>

In Scott’s formulation, they have accepted the “public transcript”. There are other examples, such as Agrippina pretending not to understand that she had escaped assassination. Tacitus records that her “one defence against treachery was to leave it undetected”.<sup>503</sup> Nero and his advisors could not believe she was prepared to dissemble and their fear of detection hardened their resolve to complete the murder.

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<sup>500</sup> Scott 1990: 28-30.

<sup>501</sup> Scott 1990: 8-10.

<sup>502</sup> Tac. *Ann.* 13.16.4. Cass. Dio 57.1 comments, similarly, on difficulties of communicating with Tiberius because of his tendency to dissemble his real opinion.

<sup>503</sup> Tac. *Ann.* 14.6.

The necessity of preserving the emperor's reputation by not acknowledging the reality of a situation occurs elsewhere in Tacitus:

Iuliusque Montanus senatorii ordinis, sed qui nondum honorem capessisset, congressus forte per tenebras cum principe, quia vi attemptantem acriter reppulerat, deinde adgnitum oraverat, quasi exprobrasset, mori adactus est.

Julius Montanus, a member of the senatorial order, though he had not yet held office, met the emperor casually in the dark, and, because he repelled his offered violence with spirit, then recognized his antagonist and asked for pardon, was forced to suicide, the apology being construed as a reproach.<sup>504</sup>

Montanus' crime was not that he struck the emperor, but that he had admitted doing so. Bartsch uses these examples to suggest that: "When an emperor's audience fails to decode the spectacle before their eyes into reality and then recode their own response back into the feigned and theatrical, the outcome is death."<sup>505</sup> However, as Bartsch notes, her examples reflect Tacitus' view of events and this may present a problem of interpretation. The emperor's position, his relationship with the elite, and questions raised by the contemporary evidence will be discussed fully in chapter 4. For now, it needs to be noted that Tacitus' evidence may be coloured by wider literary concerns. Nor is it clear that Bartsch's approach, and Scott's influential model, fully take into account the specific nature of Roman elite society. The emperor was, in theory, one elite Roman among others. He may have been the ultimate patron, and the person of greatest *auctoritas*, but he was still *primus inter pares* and not outside the system.

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<sup>504</sup> Tac. *Ann.* 13.25.2.

<sup>505</sup> Bartsch 1994: 12-23, quoted p. 21. She also uses the incident at the Saturnalia in AD 54, Tac. *Ann.* 13.15.1, discussed in chapter 2.

The evidence for Nero's principate may be further complicated, because it seems that there was a fashion for insult within the emperor's close circle. Offensive epigrams were popular and the *Apocolocyntosis* and the *Satyricon* may reflect contemporary trends for insulting literature.<sup>506</sup> Dio reports that:

ἦν δέ τις Μᾶρκος Σάλουιος Ὅθων, ὃς οὕτως ἔκ τε τῆς ὁμοιότητος  
τῶν τρόπων καὶ τῆς κοινωνίας τῶν ἀμαρτημάτων τῷ Νέρωνι  
ῥκεῖωτο ὥστε καὶ εἰπὼν ποτε πρὸς αὐτόν ‘οὕτω με Καίσαρα  
ἴδοις’ οὐδὲν διὰ τοῦτο κακὸν ἔπαθεν, ἀλλὰ τοσοῦτον μόνον  
ἀντήκουσεν ὅτι ‘οὐδὲ ὕπατόν σε ὄψομαι.’

There was a certain Marcus Salvius Otho, who had become so intimate with Nero through the similarity of their character and their companionship in crime that he was not even punished for saying to him one day, “As truly as you may expect to see me Caesar!” All that he got for it was the response: “I shall not see you even consul.”<sup>507</sup>

Dio disapproves of this, pointing a moral about the men's bad character, but the anecdote also shows a potential political danger. Excessively free speech among Nero and his intimates seems to have created problems of response, with confusion over what was and was not acceptable. Some of those who joined the Pisonian conspiracy in AD 65 are alleged to have done so after taking offence at imperial insults. This suggests that Nero was not handling his “script” for dealing with the elite correctly, since Tacitus claims that both Lucan and Afranius Quintianus were motivated by resentment. Lucan was insulted because his poetry was suppressed and Quintianus at being targeted in a scurrilous poem by Nero.<sup>508</sup>

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<sup>506</sup> Nisbet 2003: 113-33.

<sup>507</sup> Cass. Dio 62.11.2.

<sup>508</sup> Tac. *Ann.* 15.49.

The evidence for Lucan's quarrel with the emperor is the more solid.<sup>509</sup> Lucan was forced to commit suicide in 65 and his last words were allegedly a quotation from the *Pharsalia*.<sup>510</sup> It is hard to know quite how to unravel the various accounts, but it seems that a breakdown in the personal relationship between the two men contributed to Lucan's hostility, and that insult was a factor.

If the etiquette of the imperial *domus* reflects the established relationship between clients, subordinates and their patron, then it is well within that model both to recognise the underlying reality of a situation, and to ignore it. Cicero and Cato used that strategy to retain cordial relations a hundred years before Nero's *amici*. The example of Pastor attending a banquet with Gaius after his son's murder reflects a situation warped by the emperor's misconduct, but ignoring insult was a normal, acceptable strategy for minimising its effect.<sup>511</sup> Etiquette for dealing with a difficult situation has become distorted by imperial cruelty and extreme circumstances, but the basic model remains intact. The problem is therefore not that the model for dealing with insult between people of different status was artificial in itself, but that not all emperors played their role as senior partner properly.

Tacitus claims he quotes Subrius Flavus' explanation for why he joined the Pisonian conspiracy against Nero in AD 65:

“oderam te,” inquit. “nec quisquam tibi fidelior militum fuit, dum amari meruisti: odisse coepi, postquam parricida matris et uxoris, auriga et histrio et incendiarius extitisti.”

“I hated you,” he answered, “and yet there was not a man in the army truer to you, as long as you deserved to be loved. I began to

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<sup>509</sup> Cass. Dio 62.29. Vacca, *Vita Lucani*, Suet. *Vita Luc.* Rudich 1997: 111 argues for four books before the ban. Rudich 1993: 95-7 believes Lucan's hostility is more overt after Book 4.

<sup>510</sup> Tac. *Ann.* 15.70.

<sup>511</sup> Sen. *De Ira* 2.33.2-4. Also Suet. *Calig.* 27.4. Pastor has to retain the appearance of cordiality with the emperor for the sake of his second son.



hate you when you turned into the murderer of your mother and your wife – a chariot driver, an actor, a fire-raiser.”<sup>512</sup>

This is provided as an example of bluff, military plain speaking, but it also reveals that there are limits to imperial *auctoritas*. Subrius Flavus’ rebuke is not just an outburst along Scott’s lines, of “what everyone was thinking”, or a reaction against a “script”. It is a response to an emperor who has set himself outside the norms of elite behaviour and so forfeited any right to respect from his subordinates. The rules governing the relationship between the emperor and his subordinates have been stretched to breaking point.

This contrasts with Augustus, who left the senate rather than be rude to his critics, so behaving as a great aristocrat who may bend the rules but not break them. Similarly, when Vespasian made jokes to and about his *amici* and Pliny emphasised Trajan’s willingness to acknowledge others’ merit, this was appropriate interaction.<sup>513</sup> It allowed the elite to retain their *dignitas*. When the model of the *princeps*’ position within an acceptable, Republican-type framework as a respected senior friend held firm, subtle manipulation of relative status could be used to avoid conflict. For example, Asinius Pollio learnt that he had offended Augustus by holding a dinner party on the evening that Gaius Caesar’s death was announced. His explanation was that he had done exactly the same when his own son died.<sup>514</sup> This is masterly, since it allowed Augustus to recognise that Pollio, as a bereaved (grand) parent, had equal claim to grief. Presenting the situation in terms of unsentimental, old-fashioned Roman *virtus* made any rebuke unseemly between fellow aristocrats.

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<sup>512</sup> Tac. *Ann.* 15.67.2. C.f. also Suet. *Calig.* 29.1 where Gaius is proud of his *inverecundia* and rude to his relations, including his grandmother. Suetonius directly criticises Gaius’ *atrocitas verborum*.

<sup>513</sup> Suet. *Aug.* 66.4, *Vesp.* 13; Plin. *Pan.* 18; 43, notes Trajan named affectionately in many wills, 64 on modest behaviour.

<sup>514</sup> Sen. *Controv.* 4. *pr.*4-5.

The evidence suggests that an emperor who revealed his autocratic power too clearly created problems of response. Since he no longer retained the character of the senior member of the elite, people became confused and frightened about how to reply. This does not quite fit Scott's model, where "transcripts" are imposed from above or evaded from below, because in imperial Rome the script was supposed to be a shared one. The emperor was on equal terms with his *amici*, and merely a little more equal than the others. The effect of imperial status on criticism and insult in regard to the elite is complicated because we are dealing with an unfamiliar culture and the surviving information is partial and prejudiced. It does suggest that we should be wary of imposing models from other societies on the very particular circumstances of the principate. It seems likely that an emperor who handled his role well retained respect among the elite, while an emperor who made the reality of his power too overt created resentments. These could lead to his downfall. This theme requires further investigation, and the next chapter will explore freedom of speech between the emperor and the senate.

### 3.6 Private and public communication

It has been argued that elite Romans needed to present themselves positively to the community as a whole, so that status was enhanced and repercussions avoided. Was there also a sense of a private exchange, one that carried no risk of negative consequences from wider society? Seneca describes degrees of severity for a reprimand, which suggests he has in mind a tidy sequence where communication moved from "private", through "public" to "legally actionable".<sup>515</sup> However, the evidence does not reflect his model and it is far from clear that any such progression existed outside the philosopher's writings.

It is usually asserted that Roman concepts of "private" and "public" differed from modern western norms. In the modern world, a private communication is

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<sup>515</sup> Sen. *De Ira* 1.16, n.b. obiurgatio te primum secreta deinde publicata emendare temptabit.

shared between a small number of individuals, on the understanding that it is not intended for a wider audience. Any violation of this causes shock and offence. Defining boundaries between public and private is a contemporary concern, because new technologies make these problematic and changeable. For example, when using a medium such as Twitter, a message may reach a wider audience than anticipated, or cause unforeseen offence.<sup>516</sup> This difficulty in defining one's intended audience and in predicting the impact of a communication can be paralleled in Roman society. When Antistius Sossianus recited rude verses at a dinner party, he found himself prosecuted for *maiestas* by Cossutanius Capito.<sup>517</sup> When Clutorius Priscus was brought to trial for his poem anticipating Drusus' death, the recital took place in a private house among a gathering of women and it is not clear that any written copy had circulated.<sup>518</sup> It is easy to suggest that these trials are "really" about politics and that reporting offensive speech provided a convenient excuse for factional attack. This needs to be explored further, since Sossianus and Priscus must have felt they were in a safe environment when they recited their poems; they did not expect public consequences. On other occasions, unfortunate remarks were made before a public audience with varying results. When Cestius criticised a declamation by Quinctilius Varus, son of Augustus' disastrous general saying "it was by that kind of carelessness your father lost his army", he incurred universal disapproval. Slandering the father to scold the son was not an appropriate rebuke, but it led to

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<sup>516</sup> So for example the recent ruling by the Press Complaints Commission that a civil servant had no redress against newspaper articles about her Twitter account [www.pcc.org.uk/news/index.html?article=NjkzNQ](http://www.pcc.org.uk/news/index.html?article=NjkzNQ) - the PCC specifically note the conflict between the complainant's "reasonable expectation" that material would not be widely accessed and her unprotected posts and notes there is an ongoing debate about the use of social media. The current scandal surrounding false allegations made against Lord McAlpine provides another example. C.f. <http://www.guardian.co.uk/law/2012/nov/27/lord-mcalpine-twitter-libel> (accessed 28/11/2012).

<sup>517</sup> Tacitus' account seems to underplay the political faction involved, since Capito is Tigellinus' son-in-law. Despite his deafness at the party, Sossianus later orchestrated Scapula's downfall from exile (*Ann.* 16.14-15).

<sup>518</sup> Levick 1999: 160-1 provides a convincing political analysis of factional struggle between supporters of Drusus and Claudius to explain the motivation for the trial.

no more than social difficulty.<sup>519</sup> Why were some remarks subject to public interest and a trial but not others?

When the sources consider an exchange among the elite, they also address the issues of who the participants and bystanders are, and the location where it occurs. They may discuss the subject matter of the conversation, but the topic does not decide whether it is of public concern. The distinction needs to be sought elsewhere, and Riggsby's study seeks to define "public" and "private" in the Roman world. Riggsby argues that the Roman elite distinguished between "secrecy", which is the deliberate concealment of information and activity from a particular audience, and "privacy". Riggsby describes "privacy" as a "behavioural norm" which allows the existence of "secrecy" as a social construct, which permits the concealment to take place.<sup>520</sup> He observes that *publicus* is an adjectival derivative of *populus* and so means something "of or pertaining to the community", while *privatus* is derived from *privus* and is then defined negatively as "anything not related to the community as a whole".<sup>521</sup> These definitions create a structure for his exploration of "public" communication as that in which the community might take an interest and "private" communication as that which was intended to be restricted to a limited circle.

When considering freedom of speech, the distinction between public and private creates a real difficulty, and the evidence suggests we need to be even clearer about our terms. There is certainly an opposition between "public" and "private" in the source evidence, and it sometimes contrasts collective, community interests with those affecting individuals or families. The adjective *singulus* can be used synonymously with *privatus* in this context. For example, Tacitus has Asinius Gallus say:

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<sup>519</sup> Sen. *Controv.* 1.3.10.

<sup>520</sup> Riggsby 1997: 43-4. Riggsby's study is concerned with the use of the *cubiculum* as a private space and how far this was subject to community norms.

<sup>521</sup> Riggsby 1997: 48.

auctu imperii adolevisse etiam **privatas** opes, idque non novum, sed e vetustissimis moribus: aliam apud Fabricios, aliam apud Scipiones pecuniam; et cuncta ad rem publicam referri, qua tenui angustas civium domos, postquam eo magnificentiae venerit, gliscere **singulos**.

With the expansion of the empire, **private** fortunes had also grown; nor was this new, but consonant with extremely ancient custom. Wealth was one thing with the Fabricii, another with the Scipios; and all was relative to the state. When the state was poor, you had frugality and cottages: when it attained a pitch of splendour such as the present, the **individual** also thrived.<sup>522</sup>

*Privatus* can also be used to designate a citizen's role within the community with regard to whether or not they hold public office; Tacitus describes the young Octavian as *adulescens privatus*.<sup>523</sup> By the time that Pliny is writing his *Panegyricus* he can describe Trajan's status as *privatus* before he became emperor:

scriberis ab amicis, ab ignotis praeteriris: nihilque inter **privatum et principem** interest, nisi quod nunc a pluribus amaris: nam et plures amas.

You are named as heir by your friends and passed over by strangers; the only difference between the **private individual and the princeps** lies in the greater number of those who love you, as your own affections are more widely spread.<sup>524</sup>

Pliny also contrasts the position of consuls as *privati* with that of Trajan as *princeps*:

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<sup>522</sup> Tac. *Ann.* 2.33.2.

<sup>523</sup> Tac. *Ann.* 1.10.

<sup>524</sup> Plin. *Pan.* 43.2. See also 7.2, 9.3, 44.2.

contigit ergo **privatis** aperire annum, fastosque reserare: et hoc quoque redditae libertatis indicium fuit, quod consul alius quam Caesar esset. sic exactis regibus coepit liber annus, sic olim servitus pulsa **privata** fastis **nomina** induxit.

And so **ordinary people** enjoyed the honour of opening the year and heading the official calendar, and this too was proof of liberty restored; the consul need not be Caesar. The year began in the same way after the Kings were expelled long ago when the appearance of **individual names** in the calendar marked the end of servitude.<sup>525</sup>

Pliny uses *privati* to denote not citizens without office, but citizens who are not *princeps*. A similar opposition is made between *privati* and the kings of Rome, though with a careful emphasis to identify Trajan with the republican ideal. A pattern emerges in the sources whereby *privati* are still discovered in public contexts, as consuls and officials of state. This is not so surprising, since even the most personal affairs formed part of the competitive jockeying for status underpinning elite society. The topics Pliny writes about include brokering marriages and letters to his wife's grandfather and aunt about her miscarriage.<sup>526</sup> These are not subjects to concern the individual and not the community; rather they concern the individual within his community.

When *publicus* and related words are used in the imperial sources to refer to speech, they denote something which will become a matter of public knowledge. They may also be used to describe exchanges in the presence of an audience. So, for example, Suetonius tells us about Domitian's literary interests:

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<sup>525</sup> Plin. *Pan.* 58.3. See also Suet. *Tit.* 1.

<sup>526</sup> Plin. *Ep.* 1.14, 8.10, 11.

simulavit et ipse mire modestiam in primisque poeticae studium,  
tam insuetum antea sibi quam postea spretum et abiectum,  
recitavitque etiam **publice**.

He himself too made a remarkable pretence of modesty and  
especially of an interest in poetry, an art which had previously  
been as unfamiliar to him as it was later despised and rejected,  
and he even gave readings in **public**.<sup>527</sup>

These seem to be open readings attended by a wide, if perhaps not entirely  
restricted, audience. An uncontrolled audience also emerge when Pliny describes  
Trajan's public appearances:

adventante congiarii die, observare principis egressum **in**  
**publicum**, insidere vias examina infantium futurisque populus  
solebat.

On the day of the distribution, it had been the custom for swarms  
of children, the populace of the future, to watch for the emperor's  
**public appearance** and line his path.<sup>528</sup>

This suggests that in a "public" setting, the listeners cannot be easily controlled.  
"Public" does not necessarily concern what is said but who is present to hear it. It  
was rare for an elite Roman to be alone, since both within and without the home  
slaves would be present, often in large numbers.<sup>529</sup> The continual company of  
friends and clients was so entrenched that when Cicero has Antony advise that it  
is best for clients to give their instructions privately, he needs to be explicit that  
total privacy means no one else is to be present.<sup>530</sup> The presence of bystanders

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<sup>527</sup> Suet. *Dom.* 2.2.

<sup>528</sup> Plin., *Pan.* 26.1. See also Tac. *Ann.* 1.77.4, 80.3; Plin. *Pan.* 24.3.

<sup>529</sup> D'Arms 1991: 171.

<sup>530</sup> Cic. *De or.* 2.24.102. equidem soleo dare operam, ut de sua quisque re me ipse doceat et ut ne quis alius adsit, quo liberior loquatur. Riggsby 1997 discusses the role of attendants and the level of privacy expected by the elite.

should thus be seen as a normal factor, but their capacity to both judge and divulge conversations is viewed ambiguously by the sources. Seneca considered it a sufficient danger that he advises that one should cultivate friends and ignore gossip.<sup>531</sup> Epictetus gives similar guidance.<sup>532</sup> Plutarch provides examples where a public rebuke has proved counter-productive and caused the subject to deny that there is a problem in order to save face in front of an audience. He highlights criticising husbands in front of wives or parents in front of children as particularly disastrous.<sup>533</sup> However, an audience was such an essential aspect of elite communication, that it could be exploited in order to manage an exchange. When Pliny describes a confrontation in the senate between Licinius Nepos and Juventius Celsus, each man was forewarned about his opponent's argument; their friends had gossiped so much that it was as if they had agreed what to say.<sup>534</sup> Pliny's picture of the senators scurrying (*cursitabant*) from one group to another in order to learn what is happening illustrates the role friends played in negotiating the exchange of information. Pliny may find such behaviour undignified, but he reveals social realities. This is a pre-negotiated exchange, and it has the advantage that none of the parties involved will be surprised by what is said. Here there is no conflict over whether anything should be withheld; the bystanders' role is to facilitate communication.

When it comes to considering the location of conversations, it is usually argued that a member of the Roman elite had limited privacy as it is understood in the modern west. This was partly due to the presence of slaves and friends, as described above, and partly due to other cultural factors. In modern society, the home is considered a private space, while external settings, especially workplaces, are public areas.<sup>535</sup> Wallace-Hadrill describes elite Roman homes as

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<sup>531</sup> Sen. *De Ira* 2.22, 24; *Ep.* 105.

<sup>532</sup> Epictetus, *Manual* 33.

<sup>533</sup> Plut. *Adulator* 32 - still excellent advice today.

<sup>534</sup> Plin. *Ep.* 6.5. tanta loquacitas amicorum, ut homines iurgaturi id ipsum invicem scierint, tamquam convenisset.

<sup>535</sup> Wallace-Hadrill 1988: 56.



“a locus of public life. A public figure went home not so much in order to shield himself from the public gaze, as to present himself to it in the best light.”<sup>536</sup> This awareness of the “public gaze” appears in Dionysius of Halicarnassus’ description of the censor’s office, whose remit extended to the bed-chamber and indeed everything that took place within the home.<sup>537</sup> Wallace-Hadrill discusses the layout of a Roman *domus* and suggests that since the home was used for receiving guests and clients, there were grades of relative privacy. Thus the morning *salutatio* in the atrium would be generally open, *cena* in the *triclinium* would imply a greater level of intimacy and access to the *cubiculum* would be restricted to a privileged few.<sup>538</sup> Wallace-Hadrill argues that the conventional translation of *cubiculum* as “bedroom” is misleading, as it formed part of a suite of rooms which became more private and restricted as the visitor penetrated from *atrium* to *triclinium* to *cubiculum*.<sup>539</sup> Riggsby refines this idea and argues for the *cubiculum* as a space for privacy, but only within narrow limits and as one still subject to community judgement of acceptable standards.<sup>540</sup> Both scholars are concerned with the problem of defining private and public space within the home, and neither archaeological evidence nor the Roman sources provide easy answers.

When Pliny describes Trajan’s presence at his newly restored Circus Maximus, he declares:

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<sup>536</sup> Wallace-Hadrill 1988: 46.

<sup>537</sup> Dion. Hal. 20.13.3.

<sup>538</sup> Wallace-Hadrill 1988. Thebert 1989 makes broadly similar points that concepts of privacy in a Roman home did not parallel those of the modern world. Keegan 2011: 179-80 discusses Mouritsen’s forthcoming work, examining the graffiti in the atrium of the House of the Menander at Pompeii and arguing that it was left by *clientes* waiting to be admitted. It is found concentrated at the entrance and three columns in the north row of the peristyle, suggesting that these were particular areas where people congregated.

<sup>539</sup> Wallace-Hadrill 1988.

<sup>540</sup> Riggsby 1997.

licebit ergo te civibus tuis invicem contueri; dabitur, non **cubiculum** principis sed ipsum principem cernere in **publico, in populo** sedentem, populo, cui locorum quinque milia adiecisti.

Thus your subjects will be able to look on you in their turn, they will be able to see not just the emperor's *cubiculum* but the emperor himself in public, sitting among his people, the people to whom you have already given an additional five thousand seats.<sup>541</sup>

Pliny here is marking out the *cubiculum*, which Betty Radice translates as “emperor’s box”, as a space apart from the seats of the ordinary people. The point of his eulogy here is Trajan’s accessibility in sharing the seats and spectacle with the *populus*. This *cubiculum*, which Trajan has chosen to leave so that his people can see him, physically separates the occupant from those not invited within. Pliny’s speech needs to be read cautiously, since its whole purpose is to praise Trajan, but this theme of the emperor’s accessibility in moving from private to public space was important enough for him to repeat.<sup>542</sup> On a less exalted occasion, Pliny is also concerned with accessibility. When he visited the ailing Corellius Rufus:

servi e **cubiculo** recesserunt (habebat hoc moris, quotiens intrasset fidelior amicus) quin etiam uxor quamquam omnis **secreti** capacissima digrediebatur.

His slaves retired from his *cubiculum* (this was a practice he maintained whenever one of his more trustworthy (*fidelior*) friends came in) and even his wife, who was wholly privy to every confidence, used to leave.<sup>543</sup>

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<sup>541</sup> Plin. *Pan.* 51.5.

<sup>542</sup> Plin. *Pan.* 23, 24.

<sup>543</sup> Plin. *Ep.* 1.12.7.

In this case, the limited admission to the *cubiculum* is restricted further. Pliny and Corellius' conversation lacks any bystanders and we only know about it because Pliny records the occasion. This situation was not confined to a *cubiculum*. When Spurrina invites Pliny to accompany him on a carriage-ride on his country estate, there is seclusion for conversation without an audience, and Pliny is at pains to stress that the invitation was a compliment.<sup>544</sup>

This evidence suggests that it is not place *per se* but the presence or absence of an audience which governs the nature of an exchange. Tacitus describes Germanicus' final conversations with his wife, when he advises her to be circumspect in her dealings with the powerful:

tum ad uxorem versus per memoriam sui, per communis liberos  
oravit exueret ferociam, saevienti fortunae summitteret animum,  
neu regressa in urbem aemulatione potentiae validiores inritaret.  
haec **palam** et alia **secreto**, per quae ostendisse credebatur metum  
ex Tiberio.

Then he turned to his wife, and implored her “by the memory of himself, and for the sake of their children, to strip herself of pride, to stoop her spirit before the rage of fortune, and never — if she returned to the capital — to irritate those stronger than herself by a competition for power”. These words **in public: in private** there were others, in which he was believed to hint at danger from the side of Tiberius.<sup>545</sup>

Historical accuracy is not important here: what matters is the contrast between Germanicus' words in the presence of bystanders and what he says without an audience, with the adverb *palam* used to denote when bystanders are present. The

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<sup>544</sup> Plin. *Ep.* 3.1.5. In this and the previous example for the honour granted to Pliny through private conversation to be appreciated, it has to be made public.

<sup>545</sup> Tac. *Ann.* 2.72.1.

example shows Tacitus understands the contrast between “open” and “secret” exchanges and expects his audience to do so too. The word he uses for confidential conversation is *secretus*, derived from *secerno* and with meanings which include separate, alone, solitary and hidden, and so “secret”. This word is used to describe someone going apart physically, as Otho does to write farewell notes when it becomes clear that his bid to become emperor has failed.<sup>546</sup> It is also used to denote a conversation with an audience limited by invitation. When Pliny compares the freedom of speech under Trajan with the fear that remarks would be reported to Domitian, he wishes Trajan would overhear the confidential exchanges among family members:

queri libet quod in **secreta** nostra non inquirant principes nisi quos odimus. nam si eadem cura bonis ac malis essent, quam ubique admirationem tui, quod gaudium exultationemque deprehenderes, quos omnium cum coniugibus ac liberis, quos etiam cum domesticis aris focusque sermones!

We may well complain that it is only the rulers we hate who violate our **privacy**, for if good and bad were equally inquisitive, what universal admiration for yourself you would find, what delight and rejoicing, what conversations you would hear everywhere between us and our wives and children, and even before the hearths and altars of our homes.<sup>547</sup>

These are conversations within the *domus*, taking place before the restricted, domestic audience. Tacitus provides an example of a contrast between information limited to a few persons and the extension of that knowledge to a wider audience:

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<sup>546</sup> Suet. *Otho* 10.2: **secreto**que capto binos codicillos exaravit.

<sup>547</sup> Plin. *Pan.* 68.6-7.

quod postquam Sallustius Crispus particeps **secretorum** (is ad tribunum miserat codicillos) comperit, metuens ne reus subderetur, iuxta periculoso ficta seu vera promeret, monuit Liviam ne arcana domus, ne consilia amicorum, ministeria militum **vulgarentur**, neve Tiberius vim principatus resolveret cuncta ad senatum vocando.

The remark came to the ears of Sallustius Crispus. A partner in the imperial **secrets** — it was he who had forwarded the note to the tribune — he feared the charge might be fastened on himself, with the risks equally great whether he spoke the truth or lied. He therefore advised Livia not to **publish** the mysteries of the palace, the counsels of her friends, the services of the soldiery; and also to watch that Tiberius did not weaken the powers of the throne by referring everything and all things to the senate.<sup>548</sup>

The adverb *clam*, meaning secretly, is also used to denote information restricted to a limited or privileged audience, as when Vespasian restricts his jibe against Licinius Mucius to a limited circle:

Licinium Mucianum notae impudicitiae, sed meritorum fiducia minus sui reverentem, numquam nisi **clam** et hactenus retaxare sustinuit, ut apud communem aliquem amicum querens adderet clausulam: “ego tamen vir sum.”

Though Licinius Mucianus, a man of notorious unchastity, presumed upon his services to treat Vespasian with scant respect, he never had the heart to criticize him except **privately** and then

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<sup>548</sup> Tac. *Ann.* 1.6.3. Note also 4.21.2 where Piso is accused of secret treasonable conversation (Pisonem Q. Granius **secreti sermonis** incusavit), 2.40 where a distinction is made between “secret” and “open” executions (nec Tiberius poenam eius **palam** ausus, in **secreta Palatii parte** interfici iussit corpusque **clam** auferri.) 2.82.1 for secret conversations between Livia and Plancina (sermones **secreti**).

only to the extent of adding to a complaint made to a common friend, the significant words: “I at least am a man.”<sup>549</sup>

In this example, the expectation of privacy has been overturned, and the anecdote recorded, but the use of *clam* denotes that it was originally a quip made to a limited group and not intended for general circulation.

If, in response to these examples, the definitions of “public” and “private” are adjusted so that the opposition is placed not between exchanges that are “public” and “private” but between ones that are “public” and “secret”, the tensions in the sources become far more explicable. This is why judging what could and could not be disseminated was a source of such anxiety among the Roman elite.

Anxiety becomes especially acute at times of political turmoil, when the unscrupulous could report any conversation if it suited their purposes. The most notorious case was that of Titius Sabinus, encouraged to insult Tiberius by the seemingly friendly Latinius Latiaris while three senators hid and listened in the roof space above. Sabinus was denounced and executed; only his dog remained loyal. This conforms to the pattern we are starting to expect. In Tacitus’ account, Latiaris begins by encouraging Sabinus to express his hostility to Sejanus and Tiberius. He then meets Sabinus in the public setting of the street, and persuades him to return home and to enter a *cubiculum* as if he has fresh news to impart. There are echoes of comedy as Tacitus reports:

tectum inter et laquearia tres senatores haud minus turpi latebra  
quam detestanda fraude sese abstrudunt foraminibus et rimis  
aurem admovent.

Three senators thrust themselves into the space between the roof and ceiling, an ambushcade as humiliating as the ruse was detestable, and applied an ear to chinks and openings.<sup>550</sup>

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<sup>549</sup> Suet. *Vesp.* 13.

We have seen that the move from the street to the *cubiculum* should have signalled that the conversation was intended to be secret. The conspirators offend against this code when they overhear and repeat what was said. The problem of how to define whether a conversation was secret or not resonates with Tacitus, and he concludes:

non alias magis anxiosa et pavens civitas, tegens adversum  
proximos; congressus, conloquia, notae ignotaeque aures vitari;  
etiam muta atque inanima, tectum et parietes circumspectabantur.

The anxiety and panic, the reticences of men towards their nearest and dearest, had never been greater: meetings and conversations, the ears of friend and stranger were alike avoided; even things mute and inanimate — the very walls and roofs — were eyed with circumspection.<sup>551</sup>

No exchange can be safely categorised as “public” or “secret”, so it is best to keep quiet. In these circumstances, there was nowhere entirely safe from scrutiny. This brings us full circle back to the prosecutions of Antistius Sosianus and Clutorius Priscus, because it suggests why they did not anticipate the response to their poetry. They may have had confidence that the limited, invited audience and secluded setting meant they could speak more freely. Others present interpreted the situation differently and took the opportunity to disclose what they had heard.

### 3.7 Conclusion

This chapter has explored how the status-conscious and hierarchical nature of Roman society affected response to insult and criticism. It has considered ways in which insult could be managed in order to avoid offence and allow social

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<sup>550</sup> Tac. *Ann.* 4.69.1. The sources do not say, but presumably they must have had help from within the household to carry out the plan.

<sup>551</sup> Tac. *Ann.* 4.69.3.

relationships to function smoothly and with mutual benefits. Though the risks of offending someone with power and influence were severe, those of very low or very high status had more freedom of speech, because they stood apart from the structures which controlled the rest. The most humble lacked power and so posed no threat, while the highest had sufficient standing to rewrite social rules on their own terms. For the rest, this luxury was not available. The importance of relative status and patronage explains why a lesser friend can speak more openly than one of equal or superior status. The emperor's position did not, in theory, differ greatly from that of other senior members of the elite. An emperor who successfully maintained that role faced fewer problems in interacting with the elite.

Managing criticism required considerable finesse, and flattery was important for mediating negative remarks. Strategies were needed to avoid giving offence and to maintain the speaker's own position as a well-intentioned man of good character. This was why ignoring or misinterpreting insults was an essential tool in elite Roman communications: if nothing to cause offence was recognised, then no difficulty existed. Relatively few cases of external control of insults are found in the sources, and it seems likely that this is because these strategies functioned automatically. Someone's innate understanding of how to express insult or criticism safely, or how to respond, avoided offence. When someone failed to internalise these rules, or decided to ignore them, then the incident may leave evidence in the primary sources.

The lack of clarity the sources reveal about whether insults were a matter for public suppression or private response stems from the nature of Roman society. The elite were surrounded by slaves and by an entourage of greater and lesser friends, and a domestic setting was not necessarily separate from the wider world. This meant that almost all communication was potentially exposed to an audience. Some exchanges might take place in secret, so that they were restricted to a limited and invited audience, but even then confidentiality depended upon the discretion of the participants not to broadcast the conversation. This is one



reason why the elite became particularly vulnerable to entrapment and denunciation at times of political stress. Moreover, little distinction was made between someone's private behaviour and their innate moral character, which defined their fitness to play a role in public life. Individual moral conduct, of course, is defined and judged by the community's standards. The evidence reveals constant tension between exchanges which are public and include an audience beyond the speakers' control, and ones which are secret and meant only for those present.

Chapters 2 and 3 have explored freedom of speech in elite Roman society, with a particular focus on the problems caused by humour, obscenity and insult, and the related problem of criticising someone without giving offence. They have demonstrated that everything an elite Roman said had the potential both to affect his own reputation and that of the person he spoke to or about. Strategies for managing communication were learned at a young age and became integral in adult life. Relationships were negotiated through constant awareness of where one was speaking, to whom, and in what company. No wonder the sources demonstrate such anxiety about appropriate speech.

## 4. Politics and freedom of speech: emperor and senate

### 4.1 Introduction

It is now time to consider political freedom of speech, particularly within the senate. Modern scholars reach widely disparate conclusions about the emperor's position in regard to this. There are three broad groups of opinion. The first sees similarities between the Roman empire and a modern totalitarian state, with the emperor suppressing criticism in order to retain power.<sup>552</sup> The second group argue that when freedom of speech was controlled, such as in *maiestas* trials, this was a legitimate response to threats against the emperor. They contend that the emperor ruled through and was himself subject to legal processes.<sup>553</sup> The third group are more complicated and less cohesive, but share greater cynicism in regard to the effects of absolute power, which allowed the *princeps* to deal with the senate in an arbitrary and unpredictable fashion if he chose to do so.<sup>554</sup> These are deep waters and discussion of the constitutional nature of the emperor's position is far beyond the scope of this study. For the purposes of the present discussion of freedom of speech, it is accepted that the emperor was an autocratic ruler with effective control of military and therefore civil affairs.<sup>555</sup>

Talbert, in an exhaustive review, addresses the composition of the senate in the early empire, the developments in the career path for magistrates, and changes to

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<sup>552</sup> For example, Boissier 1875; Cramer 1945; Syme 1960.

<sup>553</sup> For example, Raaflaub and Sammons 1990; Rogers 1960, 1965 (a particular exponent of the justness of imperial rule); Rutledge 2001, 2009.

<sup>554</sup> Ahl 1984; Rudich 1993, 1997; Wirszubski 1950; Bartsch 1994. Their concerns move beyond the direct political arena to considering the use of rhetorical techniques to manipulate an audience, and an interest in the theatricality of Roman politics and the impact of the presence of an audience, which is beyond the scope of this chapter.

<sup>555</sup> This study broadly accepts the view put forward by Brunt 1977, i.e. that the powers of the emperor, from Vespasian onwards and possibly as early as Gaius were enshrined in law and passed at their accession.

elections.<sup>556</sup> The emperor's patronage was necessary for political success, and Talbert argues that "in varying degrees all senators were no doubt conscious of the paradoxical nature of their status. On the one hand, they were supposedly exalted, independent leaders of the state; on the other they were servants of the emperor, totally dependent upon his favour both for individual advancement and for maintaining the position of the corporate body, indeed their class as a whole."<sup>557</sup> This "paradox" underpins the question of freedom of speech in the early empire: the senate is theoretically independent of the emperor, but in practical terms senators are subordinate to imperial whim.<sup>558</sup>

Talbert notes the lack of surviving verbatim speeches, agendas for meetings, or records of proceedings in the senate.<sup>559</sup> Some *senatus consulta* survive through inscriptions or legal texts. This means that it is mainly necessary to rely upon literary evidence. Talbert observes that Pliny describes his own direct experiences and that he, Tacitus and Cassius Dio had access to *acta senatus* and contemporary accounts which are now lost. However, care is needed when using literary sources. For example, Tacitus claims to use specific criteria for selecting which proposals he will record:

exequi sententias haud institui nisi insignis per honestum aut notabili dedecore, quod praecipuum munus annalium reor ne virtutes sileantur utque pravis dictis factisque ex posteritate et infamia metus sit. ceterum tempora illa adeo infecta et adulatione sordida fuere ut non modo primores civitatis, quibus claritudo sua obsequiis protegendenda erat, sed omnes consulares, magna pars eorum qui praetura functi multique etiam pedarii senatores certatim exsurgerent foedaque et nimia censerent.

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<sup>556</sup> Talbert 1984: 9-32.

<sup>557</sup> Millar 1977: 9-10, 298-9; 341. Talbert 1984: 84-6.

<sup>558</sup> Millar 1977: 135-9.

<sup>559</sup> For discussion of evidence, see Talbert 1984: 4-5.

My purpose is not to relate at length every proposal, but only such as were conspicuous for excellence or notorious for infamy. This I regard as history's highest function, to let no worthy action be uncommemorated, and to hold out the reprobation of posterity as a terror to evil words and deeds. So corrupted indeed and debased was that age by sycophancy that not only the foremost citizens who were forced to save their grandeur by servility, but every exconsul, most of the ex-praetors and a host of inferior senators would rise in eager rivalry to propose shameful and preposterous motions.<sup>560</sup>

Tacitus says he will select the best and worst *sententiae* which provide *exempla* of good and bad conduct in the senate. On this occasion, what forms acceptable praise (*laudatio*) and what is disgraceful (*adulatio*) is made the theme of debate, whatever the topic. He will rank proposals in moral terms, so that bad ones become *pravus*, *infamis*, *infectus*, *sordidus*, *obsequens*, *foedus*. The result is that exercising *libertas* of speech may show that someone is a good man. The position is complicated, because this is not the case if what he actually says is dishonourable. This will be discussed in greater detail below.

This formulation of *libertas* in moral terms is found in all the primary sources. For example when Suetonius weighs up the relative tolerance of each emperor, this is presented in terms of moral character.<sup>561</sup> This moralising attitude is central to understanding political freedom of speech in the early Roman empire and will be explored in the course of the chapter. The first section will therefore set the scene, with an overview of how the sources present freedom of speech in routine senatorial affairs. This provides the context to consider praise and honours addressed to the emperor, and whether those were sincere or coerced. After that, how far criticism of the emperor and his policies was tolerated will be

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<sup>560</sup> Tac. *Ann.* 3.65.

<sup>561</sup> E.g. Suet. *Aug.* 54, *Tib.* 30-2; *Vit.* 14.

investigated. Although, as Talbert notes, trial proceedings occurred as part of routine senatorial business and so are not necessarily distinguished in the literary sources, *maiestas* trials will be treated separately here because of their particular implications for *libertas*.<sup>562</sup> Through this, we can consider the extent to which senators could speak freely to an emperor who, as Millar shows, acted “partly as a member of the senate and partly in disassociation from it”.<sup>563</sup>

## 4.2 Debates in the senate

It is difficult to assess freedom of speech in the senate because the sources make so little mention of routine business. Their interest generally lies in the exceptional, or with times of crisis. They describe Gaius’ megalomania and abuses, for example, but record almost nothing about day-to-day affairs.<sup>564</sup> An account of a debate held in AD 16 illustrates the problem. There was a question over the timing of the vacation for the senate and law courts, because if this was arranged during the emperor’s absence, then Italians and provincials would still need to conduct legal business at Rome. Asinius Gallus opposed Gnaeus Piso’s argument that public business should be allowed to go ahead in the absence of the emperor. Tacitus says:

Gallus, quia speciem libertatis Piso praeceperat, nihil satis inlustre aut ex dignitate populi Romani nisi coram et sub oculis Caesaris, eoque conventum Italiae et adfluentis provincias praesentiae eius servanda dicebat. audiente haec Tiberio ac silente magnis utrimque contentionibus acta, sed res dilatae.

Forestalled by Piso in this show of independence, Gallus objected that business, not transacted under the immediate eye of their prince, lacked distinction and fell short of the dignity of the

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<sup>562</sup> Talbert 1984: 226-7.

<sup>563</sup> Millar 1977: 278.

<sup>564</sup> Cass. Dio 59.3-6, 15, 24. Suet. *Calig.* 26.2, 48.2, 49.

Roman people; and for that reason the concourse of Italy and the influx from the provinces ought to be reserved for his presence.

The debate was conducted with much vigour on both sides, while Tiberius listened and was mute: the matter was adjourned.<sup>565</sup>

Tacitus suggests that both speakers want to make a “show” of independence, but that it is a sham because in reality both proposals praise the princeps. Either he permits business to proceed in his absence, or he is indispensable to it. Gallus does not speak from conviction, but since one form of flattery has been pre-empted, he adopts the alternative. The senators debate the question vigorously, but Tiberius himself remains silent. This illustrates the assumption, found generally in the primary sources, that senators speak insincerely, and their attitude to the emperor is automatically sycophantic. It is not clear, however, that Tacitus’ accusation of a mere “show” of independence is justified. Tiberius’ silence was significant and implies that he is allowing debate.<sup>566</sup> Suetonius describes Tiberius allowing senators to vote against his expressed opinion, to the extent that they did not feel obliged to follow him in the division.<sup>567</sup> This must surely refer to events in the early years of his principate and calls into question Tacitus’ darker insinuations. As Talbert observes, emperors may technically have been able to veto proposals but in practice they had no need to do so; the mildest expression of disagreement was more than adequate.<sup>568</sup> We may also ask whether Gallus fits the role he is assigned here. It may well be that as a consular and son of consuls, he felt genuine concern for maintaining the senate and the emperor’s dignity with regard to Italians and provincials.

Tacitus next records a confrontation, where Gallus argued that a five-year term would be appropriate for magistrates. This does not seem to be informed by a

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<sup>565</sup> Tac. *Ann.* 2.35.2. Rutledge 2009: 33 suggests that Gallus, like Arruntius and Piso was “powerful in his own right” and so had *auctoritas* to criticise the princeps and survive.

<sup>566</sup> Levick 1999: 192-5 argues that between 15 and 17, Tiberius supported free speech in a free senate.

<sup>567</sup> Suet. *Tib.* 31.1.

<sup>568</sup> Talbert 1984: 170-1.

desire to play the sycophant and Tiberius refused it in categorical terms. Gallus also opposed suggested sumptuary laws, saying that hard-working senators deserved luxuries appropriate to their position. This won the vote, with Tiberius' approval.<sup>569</sup>

Gallus, in fact, provides a further example of the way that Tacitus' accounts of senatorial debates are filtered through hindsight and wider moral concerns. At the start of the *Annals*, Tacitus develops the theme of Tiberius' *dissimulatio* by describing his professed anxiety about the burdens of the principate. Gallus responded by asking for which particular branch of government Tiberius would like to take responsibility. Tacitus says that Tiberius took offence because it exposed his insincerity. Tacitus then tells us that Gallus tries to retract and make amends, but without success:

nec ideo iram eius lenivit pridem invisus, tamquam ducta in  
matrimonium Vipsania M. Agrippae filia, quae quondam Tiberii  
uxor fuerat, plus quam civilia agitare Pollionisque Asinii patris  
foreciam retineret.

[Gallus] failed however to soothe [Tiberius'] anger, he had been a  
hated man ever since his marriage to Vipsania (daughter of  
Marcus Agrippa, and once the wife of Tiberius), which had given  
the impression that he had ambitions denied to a subject and  
retained the temerity of his father Asinius Pollio.<sup>570</sup>

There follows an account of a conversation between Tiberius and Augustus about potential rivals to the principate, whose fall Tacitus will recount in the following pages. As the narrative progresses, it becomes clear that Tacitus is not simply reporting the debate held in the senate. The exchange between Tiberius and Gallus illuminates Tiberian *dissimulatio*, and rivalry for the principate. It

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<sup>569</sup> Tac. *Ann.* 2.33.

<sup>570</sup> Tac. *Ann.* 1.12.4.

foreshadows Gallus' later imprisonment and death which came about through Sejanus' enmity.<sup>571</sup> This literary and moral agenda means the evidence needs to be assessed with great caution, making it almost impossible to tell how freely Gallus spoke and how far Tiberius resented his remarks.

The sources note the senate's increasing reluctance to take routine decisions without the emperor's approval during Tiberius' principate. For example, when they were asked to choose a suitable proconsul for the threatened province of Africa, they squabbled. Aulus Caecina Severus' proposal that governors should not be allowed to take their wives was within the form of due process, as any senator was allowed to make a proposal when asked for his opinion.<sup>572</sup> Its irrelevance to the question before them may reflect the fact that general debate was easier than making a decision that might upset the emperor. Tiberius, unimpressed by their procrastination, refused to take responsibility in their place. He wrote asking them to choose between Manius Lepidus and Junius Blaesus. Lepidus asked to be excused on the grounds of ill health and family commitments. At this point, Tacitus adds that it was not openly mentioned that Blaesus was Sejanus' uncle, although this was the deciding factor in Lepidus' reluctance and the senate's decision.<sup>573</sup> Here, the senators are influenced by their fear of offending Sejanus as well as the emperor. Tacitus presents Tiberius as duplicitous and the senate as powerless. Modern scholars have argued that this is not an accurate reflection of events and that Tiberius became frustrated by the senate's passivity. In this interpretation, he genuinely wanted to encourage a more independent response, even moving to Caprae to force them to take more responsibility.<sup>574</sup> That failed, perhaps because once Tiberius left Rome for Caprae, communication was limited to letters which passed through the

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<sup>571</sup> Tac. *Ann.* 6.23.1. Cass. Dio 58.3.1-7 has a similar version, perhaps following Tacitus' account?

<sup>572</sup> Tac. *Ann.* 3.33.

<sup>573</sup> Tac. *Ann.* 3.35.

<sup>574</sup> Rutledge 2001: 99-103 argues that Tiberius was essentially moderate in his approach and that Tacitus' portrayal is deeply negative. He does however note changes from 25, when Tiberius shows greater hostility to individuals and Sejanus becomes influential.



praetorian prefect. This is presumably why Tacitus' description of meetings of the senate shifts for the most part to their role in trials, though he does record Tiberius' response to misplaced suggestions about a senatorial bodyguard and alterations to seating regulations in the theatre.<sup>575</sup>

The senate's tendency to form factions and to seek their own individual advantage made consensus difficult. That had Republican roots, and Rutledge argues that factionalism developed during Tiberius' and Gaius' principates, as family enmities and loyalties became established, with the emperor's role as an ultimate patron shaping his relationship with the senate.<sup>576</sup> By the time of Gaius' death, the senate cannot agree, even at so critical a juncture. Instead they indulge in what Suetonius describes as "tiresome bickering" (*per taedium ac dissensionem diversa censentium*). While they dithered, the Praetorians took Claudius to their camp, accepted a donative and proclaimed him as emperor.<sup>577</sup>

When the city prefect Pedanius Secundus was murdered in AD 61, the senate's decision to apply the law and execute all his slaves sparked a popular outcry. Modern authors have commented on the moral problem posed by the execution of the slaves, arguing that the mob shows greater humanity than the senate.<sup>578</sup> Distasteful as it may be to modern sensibilities, this is not the aspect that most interests Tacitus. He records a speech by Gaius Cassius Longinus:

saepe numero, patres conscripti, in hoc ordine interfui, cum contra  
instituta et leges maiorum nova senatus decreta postularentur;  
neque sum adversatus, non quia dubitarem, super omnibus  
negotiis melius atque rectius olim provisum et quae

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<sup>575</sup> Tac. *Ann.* 6.2-3.

<sup>576</sup> Rutledge 2001: 85-6.

<sup>577</sup> Suet. *Claud.* 10; Cass. Dio 60.1 has a very similar account.

<sup>578</sup> Yavetz 1969: 29-30. Rudich 1993: 49-54 argues that C. Cassius Longinus was motivated by resentment of the arrogance of imperial slaves and notes that cruelty is a feature of upholders of the *mos maiorum*. Nippel 1995: 39-46 sees parallels with that described in Plin. *Ep.* 8.14.12-26 after the possible murder of Afranius Dexter and thinks that this is an unusual example of the people taking a role in public life, describing it as an "organised riot".

converterentur [in] deterius mutari, sed ne nimio amore antiqui moris studium meum extollere viderer. simul quidquid hoc in nobis auctoritatis est, crebris contradictionibus destruendum non existimabam, ut maneret integrum, si quando res publica consiliis eguisset.

I have frequently, conscript fathers, made one of this body, when demands were being presented for new senatorial decrees in contravention of the principles and legislation of our fathers. And from me there came no opposition — not because I doubted that, whatever the issue, the provision made for it in the past was the better conceived and the more correct, and that, where revision took place, the alteration was for the worse; but because I had no wish to seem to be exalting my own branch of study by an overstrained affection for ancient usage. At the same time, I considered that what little influence I may possess ought not to be frittered away in perpetual expressions of dissent: I preferred it to remain intact for an hour when the state had need of advice.<sup>579</sup>

Longinus' attitude is pragmatic. It is best to agree with proposals made in the senate, and avoid dissent, so that disagreement is reserved for a major occasion when it will make an impact. He then justifies the execution of the slaves on grounds of ancestral custom, legal requirement, and as an example to others. According to Tacitus, no-one dared to make a speech arguing against him:

sententiae Cassii ut nemo unus contra ire ausus est, ita dissonae voces respondebant numerum aut aetatem aut sexum ac plurimorum indubiam innocentiam miserantium: praevaluit tamen pars, quae supplicium decernebat.

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<sup>579</sup> Tac. *Ann.* 14.43.1-2.

While no one member ventured to controvert the opinion of Cassius, he was answered by a din of voices, expressing pity for the numbers, the age, or the sex of the victims, and for the undoubted innocence of the majority. In spite of all, the group advocating execution prevailed.<sup>580</sup>

It is necessary to treat this evidence with caution, since we cannot know how accurately Tacitus records what was actually said in the senate. None the less, the reluctance to answer Longinus formally raises questions. His argument was legally correct, and so difficult to counter, but Tacitus' presentation suggests that there may be more to the episode. Nero supported the senate's decree, issued an edict reprimanding the people and dispatched soldiers to enforce the penalty, but there is no indication that this would have been his decision. In fact, he vetoed Cingonius Varro's further suggestion that freedmen who had been in the house at the time of the murder should be deported, a proposal which went beyond legal requirements. It seems that reluctance to make a formal response to Longinus was due not to fear of upsetting the emperor, but the greater *auctoritas* of a fellow senator.

Pliny provides indirect evidence for why senators may have been so reluctant to speak individually against Longinus. He describes the senate's reaction when Nepos, as praetor, issued an edict that the provisions of the *lex Cincia* forbidding payment for advocates would be enforced.<sup>581</sup> The account of resulting praise and detraction shows the strength of feeling, and the risk that an unpopular statement would lead to criticism. While it was always necessary to avoid offending the emperor, the reaction of one's fellow senators also had to be considered. Pliny's second letter on the subject adds further information about relationships among senators.<sup>582</sup> He records that Nigrinus, one of the plebeian tribunes, read sections

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<sup>580</sup> Tac. *Ann.* 14.45.1.

<sup>581</sup> Plin. *Ep.* 5.9.

<sup>582</sup> Plin. *Ep.* 5.13.

of relevant laws and decrees, and then urged the senate to plead with the “best of emperors” to settle the matter, since both the law and *senatus consulta* were being ignored. This raises the question of how far Nigrinus was acting at Trajan’s behest, but none the less, appealing to the emperor to arbitrate on whether the law should be upheld was clearly routine.<sup>583</sup> Moreover, it was successful:

pauci dies, et liber principis severus et tamen moderatus: leges  
ipsum; est in publicis actis.

A few days elapsed and then a document came from the emperor which was austere but couched temperately. You will be able to read it for it is in the public records.<sup>584</sup>

The final section of the letter makes clear that Trajan had said the Cincian law should be enforced and Pliny is able to report his friends’ congratulations on his own voluntary practice of not accepting payment for advocacy. Pliny’s presentation of this is in positive terms, the outcome any right-thinking person would expect. It is notable too, that although Trajan’s decision crystallised public opinion, it was not just the emperor’s judgement that mattered. The senators were concerned with their peers’ valuation and the point of the account is to show Pliny’s own honourable and admired conduct in a contentious matter.

The evidence suggests that an individual’s self-interest was his greatest consideration. This meant that speech was constrained by fear of offending the emperor, upon whose patronage he relied for advancement. As a result, whether present in the senate, or communicating by letter, the emperor’s perceived or assumed wishes underpinned every debate. Equally important to controlling

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<sup>583</sup> Talbert 1984: 169 notes the senate’s tendency to refer matters to the emperor, even when within their remit; *relationes* are frequently referred to emperors in their absence.

<sup>584</sup> Plin. *Ep.* 5.13.8.

speech was the concern senators felt over retaining the good opinion of their peers. This is, in fact, a recurring topic in Pliny's letters.<sup>585</sup>

The evidence also shows that senatorial *libertas* varied with different emperors and within individual principates.<sup>586</sup> Rutledge, introducing a volume of essays on literature and politics, does not support this conclusion, dismissing it as a "trap".<sup>587</sup> He considers that *libertas* should be understood within a wider social dynamic which protected elite *dignitas*. His insistence that freedom of speech in the senate should be set in its social context is surely correct. It also needs to be acknowledged that the evidence for the senate's relationship with the *princeps* reflects a wide range of different experiences. That is a salutary reminder that lived experience does not always align with theoretical or literary models. The timespan of this thesis is a period of over a century, or four generations. To put that into a modern perspective, someone born in 1970 could have great-grandparents born in 1850. That perhaps makes it clearer that, while responses will be mediated by the social and cultural environment, individuals may behave differently, both from contemporaries and from their great grandparents. Augustus' conversations with Pollio or Agrippa or Maecenas were not the same on every occasion. Nero's relationships with Seneca, Lucan, Corbulo or Otho were diverse in themselves, and altered during his principate. Rather than dismissing individual differences as problematic, or trying to fit them into a single pattern, it may be more useful to see them as an integral part of the wider social framework governing how freely different people spoke at different times.

### 4.3 Praise, imperial honours and freedom of speech

Proposing honours was a normal part of senatorial business; individual senators received them to commemorate political or military achievements, and they were

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<sup>585</sup> For example, Plin. *Ep.* 1.5, 3.9, 3.20, 4.25, 7.33, 8.14, 9.13.

<sup>586</sup> Rutherford 2011: 92. His context is literary – he is discussing irony in ancient literature – but the principle is sound.

<sup>587</sup> Rutledge 2009.

routinely voted to the emperor. The question with regard to freedom of speech is whether these are sincere expressions, willingly given, or the result of sycophancy and fear. The sources themselves seem to find it difficult to answer this: Suetonius reveals his own assumptions when he describes honours voted for Augustus:

omitto senatus consulta, quia possunt videri vel necessitate  
expressa vel verecundia.

I say nothing of decrees of the senate, which might seem to have  
been dictated by necessity or by respect.<sup>588</sup>

The idea of *necessitas* – a sense of compulsion, fear of the consequences of opposition – is found frequently in the sources and is easily understood. *Verecundia* means feelings of shame or modesty and is a far more slippery concept.

Examples of sycophantic honours occur frequently in the primary sources. For example when excessive numbers of festivals were proposed to commemorate Corbulo's exploits in Armenia, Gaius Cassius Longinus urged a distinction between these and days when the gods might be worshipped and mundane business completed as well. Voting of honours had reached such unreasonable levels that it hampered normal life.<sup>589</sup> However, the sources never clearly define *laudatio*, which does the speaker and recipient credit, and *adulatio*, which dishonours both parties. This lack of clarity allows Tacitus to tell us:

[Tiberius] acerbeque increpuit eos qui divinas occupationes  
ipsumque dominum dixerant. unde angusta et lubrica oratio sub  
principe qui libertatem metuebat, adulationem oderat.

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<sup>588</sup> Suet. *Aug.* 57.1.

<sup>589</sup> Tac. *Ann.* 13.41.4.

[Tiberius] sharply rebuked those who called his work “divine” and he himself “lord”. Consequently, speech was restricted and slippery under an emperor who feared freedom while he hated sycophancy.<sup>590</sup>

The emperor’s restriction of excessive praise is surely an attempt to limit sycophancy, but Tacitus presents it as an example of Tiberius’ *dissimulatio* and of senatorial oppression. This is less than fair, since there is other evidence of Tiberius refusing excessive honours for himself and his family.<sup>591</sup> By emphasising Tiberius’ *dissimulatio*, the opposition between *adulatio* and *libertas* becomes confused, and freedom of speech itself is made slippery. There is a similar difficulty when Tacitus describes the first senatorial debate under Tiberius, over arrangements for Augustus’ funeral. Proposals are made that the procession should march through a triumphal arch. This is presented as sycophantic, but Augustus was an exceptional statesman with a unique position. Is it so extraordinary that the senate vote him funeral honours to mark this? There is no precedent for this situation, and the senate’s offer to carry Augustus’ bier and Tiberius’ refusal are probably both appropriate. It is as reasonable to interpret this exchange as a positive one as it is to read it as hostile. A similar attitude may be seen when the sources recount that the emperor entered the senate alone, and his exchanges with senators were almost too polite – “*prope excesserat humanitatis modum*”.<sup>592</sup> Tiberius is demonstrating many of the qualities which Pliny praises in Trajan’s behaviour towards the senate, respecting their *libertas* and *dignitas*. *Humanitas* is a desirable quality, yet there is an implied criticism that Tiberius, unlike Augustus, had failed to judge relationships correctly. This consistently negative portrayal of Tiberius makes it hard to judge how his behaviour should be interpreted.

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<sup>590</sup> Tac. *Ann.* 2.87.

<sup>591</sup> For example, Suet. *Tib.* 17 (under Augustus), 26-7, 50.2 (on Livia’s behalf), Tac. *Ann.* 1.14 (for Livia), Cass. Dio 57.8-9.

<sup>592</sup> Suet. *Tib.* 29.

Tacitus' account of the honours granted to Germanicus Caesar after his death is mainly positive, though he notes that many of the provisions quickly lapsed.<sup>593</sup> These remarks can be compared with the text of the original decree, in which Rowe notes that the senate are highly conservative; most of the decree summarises honours already voted, and they are careful to follow precedent when offering their own honours.<sup>594</sup> Where there was no precedent, the senate sought the emperor's advice and approval.<sup>595</sup> Their reluctance to innovate suggests that praise and honours were sensitive subjects wherever they occurred.<sup>596</sup>

The senate instructed that Tiberius' speech about Germanicus, already read before the people, was to be inscribed on bronze and displayed:

idque eo iustius futurum arbitrari senatum quod [animus Ti(beri)]  
Caesaris Aug[usti] intumus et Germanici Caesaris f(ili) eius non  
magis laudationem quem vitae totius ordinem et virtut<is> eius  
verum testimonium contineret aeternae tradi memoriae, et ipse se  
velle non dissimulare eodem libello testatus esset et esse utile  
iuuentuti liberorum posteriorumque nostrorum iudicaret.

And the senate regarded that as all the more appropriate to come to pass, because the [innermost thoughts of Tiberius] Caesar Augustus indeed contained not so much a *laudatio* of Germanicus Caesar, as the course of his entire life and a true witness to his virtue, to be handed down in eternal remembrance, and because he himself had testified in that same document that he wished not to

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<sup>593</sup> Tac. *Ann.* 2.82-3, with the funeral and trial of Piso at 3.2-7.

<sup>594</sup> Rowe 2002: 60-62; 64 notes that the *lex Valeria Aurelia* is preserved on the Tabula Siarensis in decree form, on the Tabula Hebana in statute form, and in the Todi fragment. For text, translation and commentary see Crawford 1996.

<sup>595</sup> Rowe 2002: 62. E.g. Tabula Siarensis Fragment a ll 9-21.

<sup>596</sup> Crawford 1996: 533 notes that the consultation of family members in Tabula Siarensis Fragment a ll 1-8. Yavetz 1969: 31 discusses the plebs' loyalty to Germanicus' family, which may explain why it was considered wise to include them in selecting of honours.



present matters other than as they were and judged it to be useful to the young of the next generation and those of our posterity.<sup>597</sup>

They add that the document Drusus read before the senate should also be inscribed and made public.

The speech concerned is a funerary oration, but the decree indicates considerable discomfort over what constitutes acceptable praise. It reiterates Tiberius' claim that his speech was not just *laudatio* (*non magis laudationem quam vitae totius ordinem et virtut<is> eius verum testimonium contineret*) and that his praise of Germanicus was a testimonial to an exemplary life. This is, in itself, not unusual in panegyric – Pliny employs much the same procedure in his claim that Trajan's achievements speak for themselves.<sup>598</sup> It is a formula that removes any suggestion of insincerity from a speaker, who presents himself as a purveyor of facts rather than praise. It is this part of Tiberius' speech that the senate thought important enough to reiterate, so that the decree emphasises that he praised Germanicus with integrity. It is the very ease of reinterpreting *laudatio* as *adulatio* that makes it so important for the senate to insist that Tiberius' funerary oration for Germanicus was factual and exemplary, and did him nothing but credit.<sup>599</sup>

That praise and honours could be judged demeaning and cause opprobrium is shown when Pliny describes discovering the inscription on the tomb of the freedman Pallas. This recorded that the senate had voted him a praetor's insignia and 15 million sesterces. Pallas accepted the honours but not the money, and

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<sup>597</sup> Tabula Siarensis, Fragment (b), Col. II ll 8-17, quoted ll 13-17, translated M. Crawford.

<sup>598</sup> Plin. *Pan.* 56.

<sup>599</sup> Crawford 1996: 542 notes that the Todi fragment lists penalties for those who flouted the decree, based upon the regulations for the cult of Caesar. He refers to Ph. Moreau's observation that "the prescription of a penalty ... contrasts with the carefully fostered notion of consensus in the honours for Germanicus." Does this mean that we can surmise that not everyone supported the decree and there were those who might interpret Tiberius' - and presumably also Drusus' - speeches critically?

Pliny declares it is better to laugh than be angry.<sup>600</sup> Pliny returns to the subject after he has looked up the original decree, reporting that:

inveni tam copiosum et effusum, ut ille superbissimus titulus  
modicus atque etiam demissus videretur.

I found it so verbose and effusive that the supreme arrogance of  
the inscription seemed modest and humble by comparison.<sup>601</sup>

Pliny affects to wonder whether the senate was being witty, but swiftly reflects on the underlying realities of the situation:

ambitio ergo et procedendi libido? sed quis adeo demens, ut per  
suum, per publicum dedecus procedere velit in ea civitate, in qua  
hic esset usus florentissimae dignitatis, ut primus in senatu laudare  
Pallantem posset?

So was it ambition or lust for advancement? But who is so lunatic  
as to desire advancement by way of personal and civic shame, in a  
city in which exploitation of the most illustrious distinction lay in  
being able to be first to praise Pallas in the senate?<sup>602</sup>

Pliny concludes:

quam iuvat quod in tempora illa non incidi, quorum sic me  
tamquam illis vixerim pudet! non dubito similiter adfici te.

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<sup>600</sup> Plin. *Ep.* 7.29.

<sup>601</sup> Plin. *Ep.* 8.6.2. Millar 1977: 75 takes this at face value as “an absurd but shameful historical curiosity”.

<sup>602</sup> Plin. *Ep.* 8.6.3.

How consoling it is that I had no experience of those times, of which I am ashamed as if I had lived during them! I have no doubt that your reaction is like mine.<sup>603</sup>

There is an issue with appropriateness of honours and honouring here, since Pliny shows that the senators under Claudius are competing for the wrong thing: to honour a freedman, who cannot hold the office of praetor, with the insignia *as if* he had held it.<sup>604</sup> Pallas, although a former slave, is encroaching on honours appropriate to the elite. This is, however, not the only problem that Pliny sees. He uses the inscription to distinguish the way he and his peers address a praiseworthy emperor from a senate whose *adulatio* for a freedman brought them shame.<sup>605</sup> He omits to mention that it was the consul, Barea Soranus, who proposed the honours for Pallas.<sup>606</sup> This is awkward, since Barea Soranus was forced to commit suicide under Nero, and is usually presented as an *exemplum* of courage and *libertas*. Tacitus links him with Thrasea Paetus and describes the two men as “virtue itself”.<sup>607</sup> If the eminent Barea Soranus was responsible for the proposal, Pliny’s case for the shamefulness of the situation is considerably weakened. Not identifying him as a proposer allows Pliny to imply that he and his fellow senators do not run the same risk of dishonour when they speak in Trajan’s senate. We do not, unfortunately, have the inscription for comparison, but it would be interesting to know how verbose and effusive it was, and whether it differs significantly from Pliny’s own *Panegyricus* in style. We can surmise that Pliny’s problem is that it did not: the difference lies not in the way that praise is expressed, but in who praises whom. This is why Pliny is so concerned to draw a clear distinction between praising a freedman and an *optimus princeps*.

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<sup>603</sup> Plin. *Ep.* 8.6.17.

<sup>604</sup> Lendon 1997: 21.

<sup>605</sup> Lendon 1997: 21-3 on the symbolic importance of offices for prestige and standing, hence resentment when they were awarded to a freedman.

<sup>606</sup> Tac. *Ann.* 12.53. Talbert 1984: 315 adds a technical detail that Pliny would not have found the decree in the *aerarium Saturni* but rather in the *acta senatus*. This is not a significant error, but adds to the impression that Pliny’s literary agenda matters more than a factual account.

<sup>607</sup> Tac. *Ann.* 16.21.1 (*virtus ipsa*), for the trial see 23, 30-33. Lendon 1997: 119-20 discusses ostentatious suicide used as a form of reproach.

The former is, by Pliny's definition, *adulatio* and the latter *laudatio*. It is, however, a definition that he is anxious to make sure his audience accepts, when he formulates Montanus' response for him:

ridebis, deinde indignaberis, deinde ridebis, si legeris, quod nisi  
legeris non potes credere.

You will laugh, you will then be angry, but then you will laugh,  
should you read what you cannot credit unless you read it.<sup>608</sup>

Pliny provides further evidence to help us understand senatorial views about the distinction between *adulatio* and *laudatio* by the early second century. He was appointed suffect-consul in AD 100, and gave the usual speech of thanks to Trajan. He then re-wrote it and held a *recitatio*. Not only the speech, but also two letters discussing it survive.<sup>609</sup> Pliny's public praise of Trajan must have been intended as a positive, acceptable model for both the immediate audience and the wider circle reading the published speech. However, that he sees *adulatio* as a problem is suggested when he begins with a prayer to Jupiter:

[Grant, I pray] ut mihi digna consule, digna senatu, digna principe  
contingat oratio: utque omnibus, quae dicentur a me, libertas,  
fides, veritas constet: tantumque a specie adulationis absit  
gratiarum actio mea, quantum abest a necessitate.

[Grant, I pray] that my speech prove worthy of consul, senate and  
princeps, that independence, truth and sincerity mark my every  
word, and my vote of thanks be as far removed from a semblance  
of flattery as it is from constraint.<sup>610</sup>

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<sup>608</sup> Plin. *Ep.* 7.29.1.

<sup>609</sup> Plin. *Ep.* 3.18. See Roche 2011 for an assessment of the speech's significance, intention and impact.

<sup>610</sup> Plin. *Pan.* 1.6.

Pliny wants it understood from the outset that his speech reflects *libertas* and *veritas*. It is definitely not *adulatio* and he is not obliged to make it (*a necessitate*). It was noted in the introduction that modern scholars have discussed problems with the language of praise, arguing that it had become debased by misuse. Lendon stresses the importance of praise by the praiseworthy and notes that although the sources affect to despise coerced honours, these occurred frequently.<sup>611</sup> Bartsch interprets the *Panegyricus* as an attempt to counter the problems of “linguistic bankruptcy”, the “loss of meaning suffered through value terms through their usage in the ideology of the victors”.<sup>612</sup> In this interpretation, Pliny intends to use the *Panegyricus* to “reclaim” the language of honourable *laudatio*.<sup>613</sup> Bartsch describes the *Panegyricus* as “an obsessive attempt to prove its own sincerity”.<sup>614</sup> The great risk of praise that was seen to be forced through fear was that it left all expressions of praise sounding insincere.

There is, clearly, merit in this. However, more recent studies have suggested that care is needed, because the *Panegyricus* is as much about Pliny as it is about Trajan.<sup>615</sup> Gibson notes that much of the *Panegyricus* is expressed conventionally, despite Pliny’s assertions to the contrary, and draws close parallels with praise written for Domitian.<sup>616</sup> Members of the elite routinely delivered panegyrics, so they were trained in the art. Pliny’s teacher, Quintilian, recommends praising someone’s character and physical endowments and merely mentioning his external circumstances. In the case of rulers, what matters is not their advantages and power, but the way they exploit these.<sup>617</sup> So Pliny’s praise of Trajan’s character and his good conduct in office is predictable. Nor is there much originality when Pliny expresses his “sincerity” through drawing a contrast between Trajan’s admirable behaviour and Domitian’s appalling conduct.

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<sup>611</sup> Lendon 1997: 48-50; 52-3.

<sup>612</sup> Bartsch 1994: 148-87, quoted 181.

<sup>613</sup> Bartsch 1994: 149. See also Rudich 1997: 6.

<sup>614</sup> Bartsch 1997: 149.

<sup>615</sup> Noreña 2011.

<sup>616</sup> Gibson 2011.

<sup>617</sup> Quint. *Inst.* 3.7.10-16.

Comparing present happiness with past struggles is a standard theme in panegyric. Tacitus used the same device when he described sovereignty and freedom (*libertas*) as previously irreconcilable but happily blended under Nerva and now Trajan.<sup>618</sup> When Pliny reiterates the contrast between bad and good, old and new, true and false, he is concerned with his whole audience, not only the emperor. This speech is to be understood as *laudatio* rather than *adulatio*.

Pliny's audience consists of both the emperor and the rest of the senate. When he discusses Trajan's response, he says that he had as much concern for correctness of tone as for content, not wanting to appear "presumptuous" or "superior" (*arrogantia*).<sup>619</sup> He describes his role as a senator as not only to praise, but also to guide the emperor. He says that he acted for the greater good, because he wanted to encourage Trajan to continue upon his virtuous course and so provide a model for future emperors. Trajan's conduct is presented in moral terms of his "virtues": bravery, affability, accessibility, generosity, fairness, so that he represents a perfect "*civilis princeps*".<sup>620</sup> These may be conventional values, but they were key to the emperor's good relationship with his fellow senators. This was not the only time when praise was used to create a model for the emperor's future conduct. When the senate ordered Gaius' speech on entering the consulship to be read annually, they intended to remind him of his promises.<sup>621</sup> Tacitus, describing the senate's honours to Nero in order to mark Corbulo's appointment as general against the Armenians, adds:

praeter suetam adulationem laeti, quod Domitium Corbulonem  
retinendae Armeniae praeposuerat videbaturque locus virtutibus  
patefactus.

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<sup>618</sup> Tac. *Agr.* 3.1. Morford 1992 argues for the *Panegyricus* as indirect guidance, though he probably overstates the originality of the speech.

<sup>619</sup> Plin. *Ep.* 3.18.1.

<sup>620</sup> Wallace-Hadrill 1982 discusses how the emperor should conduct himself to be considered "civilis".

<sup>621</sup> Cass. Dio 59.6, 59.7.1-2, 4-5. Winterling 2011: 59.

Apart from the routine of sycophancy, they felt genuine pleasure at his appointment of Domitius Corbulo to save Armenia: a measure which seemed to have opened a career to the virtues.<sup>622</sup>

The senate wanted their praise to encourage Nero to continue to make good decisions. This is how Pliny positions the *Panegyricus*: praise is a form of indirect guidance. A good emperor, as any good citizen, should value praise.

Pliny is not just concerned with Trajan's response. When he praises him in terms of his predecessor's failings, he extends the contrast to the audience. This elite audience, instructed only to attend the recitation if it was convenient, stayed and listened over three days. According to Pliny, they now feel genuine interest. It is easy to be cynical and detect sycophancy, but Pliny emphasises the senatorial audience's approval because it demonstrates the acceptability of this praise.

Pliny's letter of AD 107 advises Severus on delivering his own panegyric, but is more concerned with Pliny's own approach to imperial praise.<sup>623</sup> He tells Severus:

dubito num idem tibi suadere quod mihi debeam. designatus ego consul omni hac, etsi non adulatione, specie tamen adulationis abstinui, ... hoc tunc ego; sed non omnibus eadem placent, ne conveniunt quidem. praeterea faciendi aliquid non faciendive ratio cum hominum ipsorum tum rerum etiam ac temporum condicione mutatur. nam recentia opera maximi principis praebent facultatem, nova magna vera censendi. quibus ex causis, ut supra scripsi, dubito an idem nunc tibi quod tunc mihi suadeam. illud non dubito, debuisse me in parte consilii tui ponere, quid ipse fecissem.

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<sup>622</sup> Tac. *Ann.* 13.8.1.

<sup>623</sup> Plin. *Ep.* 6.27, quoted 1-2, 4-5.

I am doubtful, then, whether I should advise you to pursue the method which I observed myself on the same occasion. When I was consul elect, I avoided running into the usual strain of compliment, which, however far from adulation, might yet look like it ... Such was the method I then observed; but I am sensible the same measures are neither agreeable nor indeed suitable to all alike. Besides the propriety of doing or omitting a thing depends not only upon persons, but time and circumstances; and as the late actions of our illustrious prince afford materials for panegyric, no less just than recent and glorious, I doubt (as I said before) whether I should persuade you in the present instance to adopt the same plan as I did myself. In this, however, I am clear, that it was proper to offer you by way of advice the method I pursued.

Pliny's view that *adulatio* is hard to distinguish from *species adulationis* reflects the recurring concern over the acceptability of praise. Pliny suggests that it is the particular circumstances of place, time and persons that decide acceptability. We could formulate bluntly: Pliny presents his own speech as acceptable *laudatio* rather than *adulatio* because it was he, Pliny, who was speaking to Trajan, in a time when *libertas* was once again flourishing. He implies that Severus would do well to find a similar solution.

This section has considered the problems of *laudatio* and *adulatio*. It is clear that the contemporary sources were deeply interested in this, and that praise and honours were routine senatorial business. The sources do not define acceptable praise, but show that *laudatio* and *adulatio* were closely related, often indistinguishable. At no time would a speaker admit to speaking sycophantically to avoid displeasing a hostile emperor, but where this was perceived, it was deeply resented. The key to acceptability was the speaker's demonstration that his words reflected his own character and status, and those of the subject. When the audience considered praise to be inappropriate, or undeserved, that was *adulatio*. This was a subjective formulation, and one that made the speaker



vulnerable to the judgement not only of his immediate listeners, but also of his successors. This meant that praise intended as *laudatio*, reflecting honourably on speaker and recipient, could be reinterpreted as *adulatio* and bring disgrace, particularly if it was politically expedient to reach such a conclusion. This was why, by the early second century, Pliny took such care to position his *Panegyricus* as *laudatio*, and emphasised his audience's acceptance that it expresses suitable praise for a deserving emperor.

#### 4.4 Protest, criticism and imperial response

There is little evidence for serious political "opposition" in the senate. Boissier refers to "mécontents" and Rudich to "dissidents" but neither expression has a real equivalent in the imperial sources.<sup>624</sup> It is generally agreed that there was little interest in a movement to "bring back" the Republic. Augustus' personal *auctoritas* was sufficient to prevent serious opposition; the senate as a body was relieved by the relative calm and stability which the principate offered after the civil wars.<sup>625</sup> Among his successors, the confusion after Gaius' assassination is usually seen as the last, serious attempt to return to a "Republican" form of government.<sup>626</sup>

The emperor's relationship with the senate was always ambivalent: "essentially the imperial addresses were not open to debate."<sup>627</sup> There are rare instances of the senate defying the emperor – Dio's account of Augustus establishing the military treasury in AD 6 implies lack of cooperation, since the ex-quaestors and ex-tribunes had to be compelled to take posts as its aediles. Failure to raise voluntary revenues led to the imposition of the *vicesima hereditatum et*

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<sup>624</sup> Vogel-Weidemann 1979 notes problems with discussions of the opposition under the early Caesars, particularly lack of objectivity and the tendency to use modern parallels to interpret ancient events.

<sup>625</sup> Wirszubski 1950: 97-9.

<sup>626</sup> Suet. *Claud.* 10; Cass. Dio 60.1. Wirszubski 1950 argues that there were plots to replace the *princeps* but not to abolish the principate.

<sup>627</sup> Talbert 1984: 150-1.

*legatorum*, a tax of five per cent on all inheritances except for those from near relations. It was felt necessary to present this as a measure found in Julius Caesar's notes, surely an indication that it was unwelcome.<sup>628</sup> There was also tension over Augustus' marriage legislation, when according to Dio the senate made personal attacks on Augustus.<sup>629</sup> These few incidents represent exceptionally strong feeling and it is necessary to go beyond the strict time span of this survey to the death of Hadrian to find another such conflict. The senate initially refused to deify him and Antoninus Pius was reduced to threatening to refuse the principate before the proposal was carried.<sup>630</sup> As Talbert observes: "persuasion, rather than command was the tactful approach commonly adopted by considerate emperors. But it was hardly essential when from the beginning of the principate there could rarely be any question of rejecting imperial proposals."<sup>631</sup>

In the broadest terms, the primary sources present a "good" emperor as one who is tolerant of free speech. A "bad" emperor is an autocrat who represses people who speak against him. There is however, a real problem because this simple division into "good" and "bad" does not match the complex and varied response to criticism which is actually demonstrated. Augustus is usually presented as an emperor who allowed relative freedom and Suetonius preserves examples of political outspokenness. His description of Augustus leaving the senate rather than giving an angry response was noted in chapter 3.5. Suetonius concludes:

nec ideo libertas aut contumacia fraudi cuiquam fuit.

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<sup>628</sup> Cass. Dio 55.24.9-25.

<sup>629</sup> Cass. Dio 54.16. 56.1.2 mentions the 'riot' of the equites in AD 9, suggesting feelings were running exceptionally high.

<sup>630</sup> Cass. Dio 70.1.2-3; *Historia Augusta, Vita Hadriani* 27. Talbert 1984: 150-1 discusses the incident in the context of the emperor's relationship with the senate but without forming any conclusion about it.

<sup>631</sup> Talbert 1984: 171-2.

no one suffered for his freedom of speech or insolence.<sup>632</sup>

The problem is that this assessment of imperial tolerance does not hold true for times when political tensions ran higher. Suetonius does not appear to notice there is a contradiction when he describes Augustus reviewing the senate, wearing a sword and with armour under his tunic. He adds that the contemporary Cremutius Cordus portrays senators being searched before they were allowed to approach the emperor.<sup>633</sup> Dio presents the senate as unable to speak out during the “settlement” of 27 BC, either through confusion or fear. Dio, who is writing in the early third century, assumes that the principate was the only possible, indeed the only desirable outcome of the civil war, but underlying his account is the assumption that speech in the senate is not free, but manipulated by Augustus.<sup>634</sup> There is a similar contradiction when Dio, admittedly in an epitomised section, describes Vespasian’s lack of a bodyguard, cordiality, and general tolerance but then immediately mentions the downfall of Helvidius Priscus for outspokenness and describes the banning of philosophers from Rome.<sup>635</sup>

This contradiction is resolved if we understand that the sources do not isolate political interactions from social ones. Suetonius places the anecdote about Augustus among other examples of his modest conduct – a refusal to be addressed as *Dominus*, timing arrivals and departures so that people did not have to turn out to see him, and affability to petitioners at his *salutatio*. It is in this context that Suetonius adds his greeting senators by name, unprompted, and the list concludes with further examples of genial behaviour towards senators outside

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<sup>632</sup> Suet. *Aug.* 54. See chapter 3.5 above for full discussion. Talbert 1984: 23-4 notes that Antistius refused a consulship, possibly in order to concentrate on his legal career rather than as an act of defiance.

<sup>633</sup> Suet. *Aug.* 35.1-2.

<sup>634</sup> Cass. Dio 53.11.

<sup>635</sup> Cass. Dio 65 11-13. Suet. *Vesp.* 12-15 on Vespasian’s tolerance, also discusses Helvidius Priscus but excuses Vespasian’s involvement.

the senate house.<sup>636</sup> Exchanges in the senate are not discussed in isolation from other interactions, but form part of wider social relationships in which Augustan *humanitas* is demonstrated and criticism rendered unnecessary. It is possible to see that Augustus relies on his personal *auctoritas* for dealing with the senate. For example, in 9 BC, Cassius Severus prosecuted Asprenas Nonius for poisoning. Although not involved in the trial, Augustus sat silently in the senate, allegedly in order not to influence the outcome.<sup>637</sup> It is easy to interpret this cynically, as an act of implicit repression, since Nonius was acquitted, but contemporaries may not have seen it the same way. Augustus' action straddles the fine line between his official standing as *princeps* and his private role as *amicus*. It seems likely that the situation was more subtle than overt political coercion, not least because Quintilian criticises Severus' tactlessness in revealing his love of a fight. If there had been serious risk of antagonising the emperor, it would surely be the focus of his story.<sup>638</sup> Instead, Quintilian demonstrates that the new role of the *princeps* required renegotiation of relationships between the emperor and the elite.<sup>639</sup> Feeney suggests that we should interpret such incidents as a response to a new situation, and sees a "developing and shifting relationship" between *princeps* and senate.<sup>640</sup>

At times of tension, the veneer of civil communication is removed. Gaius' abuses and megalomania led to a breakdown in the relationship between senate and emperor, to the extent that he refused to allow senators to meet him on his return from Germany, effectively a declaration of hostility towards the senate as a body.<sup>641</sup> By the end of Gaius' principate, there is complete paralysis, with the tribunes and praetors afraid to convene the senate in his absence in case the

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<sup>636</sup> Suet. *Aug.* 53.3.

<sup>637</sup> Suet. *Aug.* 56.3.

<sup>638</sup> Quint. *Inst.* 11.1.57.

<sup>639</sup> Feeney 1992: 8-9.

<sup>640</sup> Feeney 1992: 8-9.

<sup>641</sup> Suet. *Calig.* 26.2, 48, 49.

emperor thought they had acted in his place.<sup>642</sup> Here there is no pretence of affability and the senators dare not address the emperor at all. There is no question of criticism in the senate: the emperor's power and the senate's powerlessness become manifest in a way that Augustus, Vespasian or Trajan took pains to avoid. Winterling suggests that Gaius' failure to retain the appearance of respect for the senate led to his assassination.<sup>643</sup> As Talbert notes: "the tragic consequences of a clash between a tactless emperor and the majority of senators are well known. In the end no ruler could seriously alienate the senatorial class and survive."<sup>644</sup>

One group of senators were found criticising the emperor, sometimes referred to as the "Stoic" opposition. They shared close familial and marriage links, and saw themselves as the heirs to Thrasea Paetus, who was forced to suicide by Nero.<sup>645</sup> When Tacitus records a debate about how Antistius Sosianus should be punished for *maiestas*, Thrasea Paetus' role is presented in moral terms.<sup>646</sup> Thrasea Paetus was the voice of *libertas*, encouraging the senate to vote for exile rather than execution, while a few imperial flatterers opposed him, led by Aulus Vitellius. Vitellius is represented as an abusive coward, the sycophants as wicked, the consuls feeble, and Nero petulant.<sup>647</sup> Thrasea Paetus' determination carried the day, and Tacitus notes his concern for his own *gloria* in the matter. This means that he cannot change his position without weakening the moral standing gained by defending senatorial rights. Tacitus does not mention until he describes

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<sup>642</sup> Cass. Dio 59.24.

<sup>643</sup> Winterling 2009.

<sup>644</sup> Talbert 1984: 163-4 on failures by both Domitian and Gaius to conciliate the senate.

<sup>645</sup> Rutledge 2001: 118 and Rudich 1993: 31. Rutledge believes they deserved prosecution for making a nuisance of themselves; Rudich describes them as a "dissident clan". Rogers 1960 also dismisses them as an irritation to Domitian and so deserving of prosecution, which followed due procedures. In AD 42 Thrasea Paetus took A. Caecina Paetus' cognomen after his suicide, with his wife Arria. This has been taken as an indication that he saw him as an example to be emulated, though presumably it also reflects the fact that he was Caecina Paetus' heir.

<sup>646</sup> Tac. *Ann.* 14.48-49. Rutledge 2001: 113-4 questions Tacitus' account of Nero's motives and argues strongly that Capito is motivated by self-interest. Rudich 1993: 55-8 similarly argues that the case was caused by factions but believes that Thrasea Paetus succeeded in outmanoeuvring Nero. See also Bauman 1974: 145.

<sup>647</sup> Tac. *Ann.* 14.49.

Thrasea Paetus' downfall that Capito, Tigellinus' son-in-law, had brought the original charge against Sosianus. Since Thrasea Paetus had acted as advocate for the Cilicians against Capito on charges of extortion, this rather alters the situation.<sup>648</sup> It is hard not to see private enmity among Thrasea Paetus' motives for speaking out. It does not necessarily undermine the concept of gaining moral credit for *libertas*; it does once again remind us that the situation is complicated, and filtered through the preconceptions and concerns of the sources.

Criticism was made through actions, or their lack, as well as in words. Thrasea Paetus walked out of the senate after Agrippina's murder, and avoided the senate altogether on the death of Poppaea. On both occasions, this was to avoid voting on proposals. After Agrippina's death, the senate supported proposals to disgrace her memory and congratulate Nero on escaping her alleged plot. After Poppaea's death the senate voted her divine honours.<sup>649</sup> The final break in the relationship between Thrasea Paetus and Nero occurred when he was forbidden to attend the welcome ceremonies for King Tiridates of Armenia. This was a mark of personal disfavour; when Thrasea Paetus failed to back down, Nero's *inimicitia* paved the way for prosecution in the senate.

Tacitus reveals the problem of implicit criticism in a speech given by Capito. Capito urged that Thrasea ought to be charged with *maiestas*, not for what he had done, but for what he had not done: he had not sworn the annual oath of allegiance, attended public prayers, offered a sacrifice for the safety of the prince or for his voice, or attended the senate in three years – in fact he had put his clients before his own duty to attend the senate.<sup>650</sup> *Secessio* meant turning one's back on one's proper duties as a senator. One of the charges brought against Herennius Senecio was his refusal to stand for office after the quaestorship,

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<sup>648</sup> Tac. *Ann.* 16.21.

<sup>649</sup> Tac. *Ann.* 16.21.

<sup>650</sup> Tac. *Ann.* 16.22. See Morford 1990: 1618-23 for discussion of the literary features of Tacitus' narrative of Thrasea Paetus' death, as well the way his moral attitude and authority are portrayed.

despite a long career, and that has parallels with Thrasea Paetus' *secessio*.<sup>651</sup> The Roman elite were inculcated from a very young age with a sense of duty to the community, indeed of obligation to take part in public life. Leaving the senate, effectively refusing to communicate, is a rare form of protest. Under Tiberius, Marcus Coccius Nerva resolved to die and ignored Tiberius' expostulations.<sup>652</sup> When Pliny describes gentlemen who live retired lives, it is in terms of their reward for their long service and something to be aspired to only when his own duties have been fulfilled.<sup>653</sup>

Modern scholars follow Tacitus in seeking to interpret Thrasea Paetus' actions in moral terms, as an assertion of his own *virtus* and criticism of Nero's *contumacia*. Wirszubski describes Thrasea Paetus' *secessio* as a considered policy of protest, and draws parallels with Caius Calpurnius Piso under Tiberius and Cicero during Julius Caesar's dictatorship. He argues that such action should be seen not as "opposition" but as "protest – a demonstration of disapproval, an attempt to disassociate oneself from a regime which is condemned by their very association". In this view, Thrasea Paetus' high moral standing gives his protest significance.<sup>654</sup> Rudich makes an alternative suggestion that Thrasea Paetus' withdrawal from public life "was provoked by sheer moral outrage and was not intended as a practical manoeuvre or made for any utilitarian purpose".<sup>655</sup> This refusal to take part in public life is an attack on imperial *auctoritas* which becomes, by definition, an unpardonable insult.<sup>656</sup>

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<sup>651</sup> Cass. Dio 67.13. Talbert 1984: 24 notes that we do not know how accurate this is, but it is certainly plausible given the accusations made against Thrasea Paetus on similar grounds.

<sup>652</sup> Tac. *Ann.* 6.26; Cass. Dio 58.21.4, adding the detail that Nerva could no longer endure the emperor's society.

<sup>653</sup> Plin. *Ep.* 3.1.

<sup>654</sup> Wirszubski 1950: 140-3. Brunt 1975: 10 adds that *secessio* makes both a political and moral point of Thrasea Paetus' disapproval. Similarly, Lendon 1997: 142-7 interprets the issue as a threat to Nero's *dignitas*.

<sup>655</sup> Rudich 1993: 40.

<sup>656</sup> Lendon 1997: 108-9; 142-5; Rudich 1993: 75-81. Wirszubski 1950: 140 discusses the lack of differentiation between personal criticism of the emperor and criticism of the regime.

These responses are largely mediated through Tacitus' account, which we have seen presents freedom of speech in terms of moral standing. That idea is found elsewhere. For example, it suits Pliny to be complimentary about Thrasea Paetus in order to link himself with his younger friends and relatives, who were suppressed under Domitian.<sup>657</sup> Dio, too, considers the same issue of *libertas* versus *necessitas* and has the same interest presenting freedom of speech in terms of what it reveals about moral character:

ὁ Πούπλιος δὲ δὴ Θρασέας Παῖτος ἦλθε μὲν ἐς τὸ συνέδριον καὶ τῆς ἐπιστολῆς ἐπῆκουσεν, ἀναγνωσθείσης δὲ αὐτῆς ἐξανέστη τε εὐθύς πρὶν καὶ ὅτιοῦν ἀποφύνασθαι καὶ ἐξῆλθε, διότι ἃ μὲν ἤθελεν εἰπεῖν οὐκ ἐδύνατο, ἃ δὲ ἐδύνατο οὐκ ἤθελεν. ἐν δὲ τῷ αὐτῷ τρόπῳ καὶ τὰ ἄλλα πάντα διῆγεν· ἔλεγε γὰρ ὅτι ‘εἰ μὲν ἐμὲ μόνον ὁ Νέρων φονεύσειν ἔμελλε, πολλὴν ἂν εἶχον τοῖς ἄλλοις ὑπερκολακεύουσιν αὐτὸν συγγνώμην· εἰ δὲ καὶ ἐκείνων τῶν σφόδρα αὐτὸν ἐπαινούντων πολλοὺς τοὺς μὲν ἀνάλωκε τοὺς δὲ καὶ ἀπολέσει, τί χρὴ μάτην ἀσχημονοῦντα δουλοπρεπῶς φθαρῆναι, ἐξὸν ἐλευθερίως ἀποδοῦναι τῇ φύσει τὸ ὀφειλόμενον; ἐμοῦ μὲν γὰρ πέρι καὶ ἔπειτα λόγος τις ἔσται, τούτων δέ, πλὴν κατ’ αὐτὸ τοῦτο ὅτι ἐσφάγησαν, οὐδεῖς.’ τοιοῦτος μὲν ὁ Θρασέας ἐγένετο, καὶ τοῦτο αἰεὶ πρὸς ἑαυτὸν ἔλεγεν ‘ἐμὲ Νέρων ἀποκτεῖναι μὲν δύναται, βλάψαι δὲ οὐ.’

Thraseda, like the rest, attended the meeting of the senate and listened to the letter, but when the reading was ended, he at once rose from his seat and without a word left the chamber, inasmuch as he could not say what he would and would not say what he could. And indeed this was always his way of acting on other occasions. He used to say, for example: “If I were the only one

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<sup>657</sup> Plin. *Ep.* 3.11, 3.16.10, 6.29.1-2, 7.19, 8.22.3, 9.13. Wirszubski 1950: 168 notes the precarious nature of Trajan's restoration of liberty.



that Nero was going to put to death, I could easily pardon the rest who load him with flatteries. But since even among those who praise him to excess there are many whom he has either already disposed of or will yet destroy, why should one degrade oneself to no purpose and then perish like a slave, when one may pay the debt to nature like a freeman? As for me, men will talk of me hereafter, but of them never, except only to record the fact that they were put to death.” Such was the man that Thrasea showed himself to be; and he was always saying to himself: “Nero can kill me, but he cannot harm me.”<sup>658</sup>

It would be very interesting to know the original source of this information. Could it possibly have its origin in Arulenus Rusticus’ biography of Thrasea Paetus? If so, it would provide an insight into the “official” version of Thrasea Paetus’ attitude among his successors, the making of the myth as it were. Thrasea Paetus’ early career was a successful one and it is not until the murder of Agrippina that there is any clear sign that he may have wanted to criticise Nero. When he does, the sources present his senatorial *libertas* as a matter of his own self-respect, of defining himself as a free man and a Stoic. This attitude is found in the account of Thrasea Paetus’ last evening, with its philosophical conversation and audience of respectful friends. It is hard not to see an element of stage-management in this, a deliberate cultivation of an attitude to be admired by right-thinking posterity. This interpretation fits perfectly with Tacitus’ construction of *libertas* as a form of moral currency.

There is, however, evidence that we should be wary of assuming that this “moral lens” provides the only way of looking at criticism in the senate. Dio describes Antistius’ response to a proposal made to honour Augustus:

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<sup>658</sup> Cass. Dio 62.15.2-4.

Ἀντίστιος μὲν οὖν τοῦτό τε οὐκ ἀπὸ καιροῦ εἰπεῖν ἔδοξε, καὶ ποτε λόγων ἐν τῇ βουλῇ γιγνομένων ὡς χρεὼν εἶη τὸν Αὐγουστον ἐκ διαδοχῆς σφας φρουρεῖν, ἔφη, μήτ' ἀντειπεῖν τολμῶν μήτε συγκαταθέσθαι ὑπομένων, ὅτι 'ρέγκω καὶ οὐ δύναμαι αὐτοῦ προκοιτῆσαι.'

This reply of Antistius was regarded as a happy one, as was also another remark of his, when it was said in the senate, on one occasion, that the senators ought to take turns in guarding Augustus, Antistius, not daring to speak in opposition nor yet willing to assent, remarked, "As for me, I snore, and so cannot sleep at the door of his chamber."<sup>659</sup>

This is not presented in the same moral terms we found used about *libertas* in Tacitus. This proposal was *adulatio* and direct refusal was impossible, so Antistius saved face through a witty response that made those supporting it look foolish. Neither Suetonius nor Dio imbue Antistius' remarks with any particular moral significance; they are an adroit rejoinder in a difficult situation. Similarly, we find a contemptuous aside by Cassius Severus on a sycophantic speech "such frankness will be the death of the man" or an anonymous senator, frustrated by Tiberius' dithering, muttering "let him take it or leave it".<sup>660</sup> There is no moralistic agenda in AD 69, when the uncertain outcome of civil war made it dangerous to pick sides. Tacitus describes a climate of paranoia in Rome, with fear of informers paralysing speech. In the senate itself, the situation is worse:

coacto vero in curiam senatu arduus rerum omnium modus, ne contumax silentium, ne suspecta libertas ... igitur versare sententias et huc atque illuc torquere ... providentissimus quisque

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<sup>659</sup> Cass. Dio 54.15.8. Suet. *Aug.* 54 has a similar account.

<sup>660</sup> Plut. *Adulator* 18; Suet. *Tib.* 24. Talbert 1984: 265-8 discusses all three examples to show that movement, asides and commotion were normal in any senatorial debate. No doubt this made sarcastic asides easier, but they still represent individuals' irritation with perceived sycophancy rather than an attempt to gain *gloria* for their *libertas*.

vulgaribus conviciis, quidam vera probra iacere, in clamore tamen et ubi plurimae voces, aut tumultu verborum sibi ipsi obstrepentes.

Moreover, when the senate had assembled in the chamber, it was hard to maintain the proper measure in anything, that silence might not seem sullen or open speech suspicious; ... So the senators turned and twisted their proposals to mean this or that, ... the most foreseeing attacked him only with ordinary terms of abuse, although some made the truth the basis of their insults. Still they did this when there was an uproar and many speaking, or else they obscured their own meaning by a riot of words.<sup>661</sup>

Both praise and criticism have become impossible, and so moral credit is irrelevant. In this crisis self-preservation is all that mattered.

The question of interpreting criticism through the “moral lens” becomes more acute when considering the remainder of the Stoic opposition, not least because the reason why they caused so much offence is opaque. Dio attributes their destruction to the charge of “philosophising” and the expulsion of philosophers from Rome.<sup>662</sup> Suetonius also links the charges with the banning of philosophers. Some scholars have therefore suggested that their opposition arose from their philosophical beliefs. Both Wirszubski and Brunt have convincingly dismissed this idea, arguing that their actions should be interpreted as appropriate to Roman senators, with Stoic philosophy as a lesser interest.<sup>663</sup> Their interest in

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<sup>661</sup> Tac. *Hist.* 1.85.3. Tacitus himself has a moral agenda to show the senate’s self seeking amorality.

<sup>662</sup> Cass. Dio 67.13. Suet. *Dom.* 10.3 attributes both biographies to Arulenus Rusticus and does not mention Herennius Senecio. Rogers 1960 dismisses the literary connection altogether and argues that the treason charges did not involve defamation and were justified. His lack of faith in the primary sources is problematic; they may have their own programme and intentions, but to dismiss them as ignorant or deliberately misleading does not help recover the facts. Lendon 1997: 90-1 points out that although philosophers dismiss the importance of “honour” they are still perceived in those terms.

<sup>663</sup> Brunt 1975; Wirszubski 1950: 126-8 describes this as “a politically harmless hero worship”.

Republican heroes – Thrasea Paetus wrote a biography of Cato – should be understood in the context of acceptable veneration of Stoics of a past age, rather than as political statements or manifestos of intent.<sup>664</sup>

This group of senators clearly took their own moral standing very seriously indeed. The problem is that their contemporaries did not necessarily accept them at their own valuation. Quintilian had close links with Domitian's court and does not approve of those who "call themselves philosophers" withdrawing from the administration of the *res publica*.<sup>665</sup> This must imply criticism of the next generation of the "Stoic opposition" and offers an alternative view to the one found amongst their admirers and biographers. The elder Helvidius Priscus' attempts to settle old scores after Vespasian came to power both upset the emperor and irritated the senate. In fact, his peers seem to have found him so intolerable that his actions set himself outside the norms for civil dealings between them.<sup>666</sup> This was a breach of etiquette as much as a political misjudgement.<sup>667</sup> His determination to retain the moral high ground failed to make accommodation between the past and the present, or allow for the fact that despite the new emperor, the composition of the senate remained essentially unchanged. This problem with continuity among the senate under a new emperor recurs. For example after Nerva took power, Pliny has a story about a dinner

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<sup>664</sup> Wirszubski 1950: 138-42 and Rudich 1993: 163 agree that Stoicism was not to be identified with Republicanism, and that they posed a threat because of their moral criticism. *Laudationes* were a Republican practice – Cicero wrote a eulogy of Cato and Caesar responded with an "Anti-Cato" – but the very different political circumstances of the late Republic and the end of the first century AD make comparisons difficult.

<sup>665</sup> Quint. *Inst.* 11.1.35, also 12.2.7.

<sup>666</sup> Tac. *Hist.* 4.4-10. See also Cass. Dio 65.12-13. Wirszubski 1950:147-50 discusses the rigid nature of the elder Helvidius Priscus' Stoic ethics and his contempt for pain and death, but notes that the nature of his opposition to Vespasian is unclear, though it seems to have taken the form of blunt speaking and insisting on the rights of the senate. Brunt 1975: 28 argues for Helvidius Priscus' moral objections, expressed too bluntly, and conflict over the succession forming the main offence against Vespasian. Rutledge 2001: 126-9, follows Bauman in regarding Helvidius Priscus as tactless, pro-Republican, inclined to conspiracy and insulting towards Vespasian and the elite. Rudich 1993: 175-7 speculates, unprovably, that he felt he had to validate himself after surviving Thrasea Paetus' downfall. Lendon 1997: 146-7 notes the potential loss of *dignitas* senators felt through being misjudged by their peers.

<sup>667</sup> See chapter 3.4.1 for a discussion of imperial status and response to general criticism.

party, where the appalling conduct of the delator Catullus Messalinus under Domitian was mentioned. In reply to Nerva's musings about what would have happened had he survived, Junius Mauricus observed he would be at the dinner party.<sup>668</sup> Fabricius Veiento, also influential under Domitian, is named as another guest. This is why insisting on righting old wrongs was so tactless of the elder Helvidius Priscus and alienated both imperial and senatorial support.<sup>669</sup>

There is still no scholarly consensus on how Tacitus' account of suppression under Domitian, with books burnt in the forum, the senate complicit in judicial murder and liberty suppressed, should be understood.<sup>670</sup> Freudenburg represents it as part of a contemporary fashion for "martyr tales" which characterises early second-century literature looking back at Domitian's principate as a reign of terror.<sup>671</sup> Rogers' view is that these senators deserved execution for being an unmitigated nuisance.<sup>672</sup> Rutledge has a similar conclusion.<sup>673</sup> Others, more sympathetic, see them as martyrs for senatorial *libertas*.<sup>674</sup> The problem is that this still formulates the question in moral terms, where *libertas* equates with moral integrity, and complicity with its lack. It may be that this needs to be reformulated. Chapters 2 and 3 explored the intense anxiety that the Roman elite felt about their reputation. Even the mildest criticism could therefore give offence, and strategies were employed to minimise this. It was seen that considerable care had to be taken in addressing one's senior friends – and the *princeps* was, by definition, the most senior of all. There is a link between the "Stoic opposition" and written criticism against Domitian – Helvidius Priscus was alleged to have implied criticism of Domitian's divorce in a farce, Arulenus

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<sup>668</sup> Plin. *Ep.* 4.22.4-7.

<sup>669</sup> Rutledge 2001: 126 on continuity between principates and the need to make disagreeable compromises.

<sup>670</sup> Tac. *Agr.* 2; 45.

<sup>671</sup> Freudenburg 2001: 214-8.

<sup>672</sup> Rogers 1960.

<sup>673</sup> Rutledge 2001: 129-35.

<sup>674</sup> Lendon 1997. Wilson 2003 takes an extreme position on this, rejecting as "revisionist" any question that Domitian's principate was not a reign of terror and arguing for an active "Stoic opposition".

Rusticus wrote a biography of Thrasea Paetus and Herennius Senecio of the elder Priscus. Historical *exempla* were an accepted way of “coding” criticism and a biography of Thrasea Paetus or the elder Helvidius Priscus invited the audience to make comparisons with their successors under Domitian.<sup>675</sup> Lendon suggests that just as praise for moral qualities was valued, criticism of them could be damaging.<sup>676</sup> In other words, the emperor was offended because these aristocratic biographies of Stoic heroes paraded his own shortcomings.

This was not an appropriate way for a junior friend to behave. Saller argues for the importance of *gratia* in social interactions, which he believes should be understood as an attitude rather than an action.<sup>677</sup> *Gratia* is the creation of “good will” between the parties. Saller conceives patronage as a personal, reciprocal relationship creating bonds between *amici* of different status.<sup>678</sup> These ideas share some common ground with Lendon’s view of a network of “honour” binding the elite to one another, which the emperor both shared and manipulated.<sup>679</sup> Roller has a slightly different formulation of the relationship between the emperor and the rest of the elite, in terms of a “gift exchange”, in which he includes speech.<sup>680</sup> In this interpretation, the emperor asserted his authority by controlling what he gave and received. Roller argues that it was

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<sup>675</sup> Ahl 1984 on “figured” speech. N.b Tac. *Dial* 3 where Maternus’ plays are dangerous because they can be read as contemporary criticism. Rutledge 2001: 132 follows Bauman in postulating that the biographies praised Thrasea Paetus and the elder Helvidius Priscus as *sanctissimi*, and so infringed imperial prerogatives, a complicated explanation which is not reflected in any of the sources.

<sup>676</sup> Lendon 1997: 119.

<sup>677</sup> Saller 1982: 21-2.

<sup>678</sup> Saller 1982: 24-9, 41-58 discusses imperial *beneficia*, see also 58-69 on imperial patronage and *amicitia*.

<sup>679</sup> Lendon 1997: 1-30 on honour, reciprocity and the importance of individual relationships, 107-75 on the emperor and honour.

<sup>680</sup> Roller 2001: 127-212 argues that “gift exchange” defines social relations between the emperor and the rest of the elite, and that this is not a passive process. Gifts could be used to impose a sense of obligation on the recipient, which included the emperor, and so gave some scope for manipulating relations with him. 213-288 frames communication between emperor and senators in terms of either parent/child or master/slaves.

important for the junior friend to show suitable *gratia* in unequal friendships. He quotes Cicero's definition:

[appellant] gratiam, quae in memoria et remuneratione officiorum et honoris et amicitiarum observantiam teneat.

[They call it] *gratia* which keeps a deferential regard for dignity and friendships in the memory and repayment of services.<sup>681</sup>

Seneca explains behaving inappropriately to one's benefactor in terms of *gratia* and *ingratia*:

non referre beneficiis gratiam et est turpe et apud omnes habetur ... ideo de ingratis etiam ingrati queruntur ... ingratus est qui beneficium accepisse se negat, quod accepit; ingratus est, qui dissimulat, ingratus qui non reddit, ingratus omni, qui oblitus est.

Not to return a favour is shameful, and is held by all to be so ... That is why people complain about ingratitude, even when guilty of it themselves. ... It is ungrateful to deny receiving a favour that one has received, ungrateful to pretend that one has not received it, it is ungrateful not to return it and most ungrateful of all to forget.<sup>682</sup>

Interpreted in the light of this, for senators to write biographies that could be interpreted as criticism of the emperor, the ultimate patron, and dispenser of favours, was an ultimate form of *ingratia*.<sup>683</sup> In such a situation, the emperor

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<sup>681</sup> Cic. *De Inventione* 2.66.

<sup>682</sup> Sen. *Ben.* 3.1.1, 3.1.3.

<sup>683</sup> Lendon 1997: 154-60 on "lack of gratitude" as justification for suppression by emperors: "obedience to the emperor, often the consequence of fear or greed, is most safely and agreeably represented by all parties as an act of honour flowing from the subject's laudable sentiments of deference and gratitude."

responded by declaring his *inimicitia*, which in turn made a senator an easy target for attack by political opponents. This is by no means a new state of affairs. In 26 BC Cornelius Gallus offended Augustus, lost imperial friendship and was forced to commit suicide because of prosecution in the senate.<sup>684</sup>

As was shown in chapter 3, this was not the only possible response to implied criticism. Domitian could have ignored the biographies, or answered them with humour. There must be surely be more to these events than appears, and underlying motivations and vested interests are no longer recoverable. There is, however, enough evidence to suggest that anger at *ingratia* was within the boundaries of normal elite response to insult. We should therefore be wary of a simple interpretation, where “good” senators defend *libertas* against a “bad” emperor, who suppressed it. This is a scenario which suits the purposes of later writers, who use association with the “Stoic opposition” to demonstrate their own lack of complicity with Domitian’s regime. For this to be effective, they had to acknowledge the moral integrity of the “Stoic opposition” and downplay any contemporary criticism of their actions. This retrospective adjustment explains why it is so difficult to understand the “Stoic opposition’s” offence against the emperor.

It is not the only place where an adjustment to political reality is found. Although there are other martyrs under “bad” emperors – Seneca is an obvious example – senators who compromise with the emperor are judged favourably. So, for example, Marcus Terentius escaped prosecution by saying that he had merely followed Tiberius’ example and public opinion by favouring Sejanus.<sup>685</sup> On another occasion, Domitius Afer mollified Gaius by representing himself as a lesser speaker.<sup>686</sup> Pliny admires his uncle’s decision to write eight books on the dry subject of “Ambiguity” in order to avoid provoking Nero.<sup>687</sup> Avoiding

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<sup>684</sup> Cass. Dio 53.23.5-7; 24.1-4, Suet. *Aug.* 66 1-2.

<sup>685</sup> Tac. *Ann.* 6.8-9.1.

<sup>686</sup> Cass. Dio 59.19.

<sup>687</sup> Plin. *Ep.* 3.5.5.



conflict is as honourable as defending *libertas*. When Agricola returns to Rome from his successes in Britain, he enters Rome by night, avoiding ostentation, and cultivating retirement.<sup>688</sup> A little later in the same text, Tacitus points the moral:

sciunt, quibus moris est inlicita mirari, posse etiam sub malis principibus magnos viros esse, obsequiumque ac modestiam, si industria ac vigor adsint, eo laudis excedere, quo plerique per abrupta, sed in nullum rei publicae usum ambitiosa morte inclaruerunt.

Let those whose way it is to admire only what is forbidden learn from him that great men can live even under bad rulers; and that obedience and moderation, if animation and energy go with them, reach the same pinnacle of fame, to where more often men have climbed by perilous courses but with no profit to the state, have earned their glory by an ostentatious death.<sup>689</sup>

Agricola has served the state in a manner impossible if he had sought *mors ambitiosa*. This is a different sort of moral justification, one that admires accommodation with the political realities of the principate.

The sources do not draw a clear distinction between the way senators and the emperor communicated in the senate and on social occasions. Instead, they consider freedom of speech as both a political and social matter, and one that depends upon the personal relationship between the emperor and individual senators.<sup>690</sup> The contemporary sources do not elucidate that in real terms senatorial *libertas* under a “good” emperor differed very little from that under “bad” emperors. Instead, they focus on the way the emperor managed the

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<sup>688</sup> Tac. *Agr.* 40.3-4.

<sup>689</sup> Tac. *Agr.* 42.4. Wirszubski 1950: 149. Lendon 1997: 112 on deliberately humble behaviour used to reduce the risk of imperial wrath.

<sup>690</sup> E.g. Suet. *Aug.* 51, *Tib.* 28. Plin. *Pan.* 22-4. Cass. Dio 55.12 on Augustus’ mellowing with age; 57.1 on difficulties in communication caused by Tiberius’ tendency towards dissimulation.

relationship with the senate, presenting a “good” emperor as civil in his dealings with the senate and individual senators. This personal relationship makes criticism difficult, since it was ungrateful to criticise an emperor who had offered any form of patronage and certainly would not invite his future support. Where criticism does occur, it is usually presented in moral rather than political terms. Understanding why criticism caused offence is complicated by the sources’ strategy of viewing criticism through a “moral lens”. This creates a distance between a past situation, where criticism was justified, and a happier present where this is no longer the case.

#### 4.5 *Maiestas* trials in the senate

When the senate met to hear criminal cases, with the consuls presiding, these were high profile accusations, made against the elite and with scandalous or political overtones. Legal processes for *maiestas* trials were discussed in detail in chapter 1; this section considers their impact upon political freedom of speech. At first sight, it may seem as if the question is redundant, since the charge of diminishing imperial majesty left no option but to condemn the defendant. Any opposition risked offending the emperor, and made a senator liable to *maiestas* charges himself.<sup>691</sup> It is therefore not surprising to find minimal debate recorded in the senate, though there were pleas for mitigation of the sentence. Tacitus gives such speeches to Manius Lepidus on behalf of Clutorius Priscus and to Thrasea Paetus for Antistius Sosianus.<sup>692</sup> These speeches are carefully couched to acknowledge the seriousness of the violation of imperial majesty, always agree that punishment is justly deserved, but attempt to assist the condemned. There were cases where intervention by influential friends or family members led to

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<sup>691</sup> Talbert 1984: 477, 479 notes that senators have no choice but to condemn in *maiestas* trials and suggests that they were correspondingly more eager to acquit for *repetundae* as compensation.

<sup>692</sup> Clutorius Priscus may not have been charged with *maiestas*. See Bauman 1974: 62; Levick 1999: 160-1. The exact charge does not affect the present discussion on communication between emperor and senate.

charges being suppressed, but these reflected the relationship the emperor had with individuals rather than with the senate as a whole.

Tacitus tells us that Agricola, by his timely decease, avoided the horrors of condemning fellow senators:

non vidit Agricola obsessam curiam et clausum armis senatum et eadem strage tot consularium caedes, tot nobilissimarum feminarum exilia et fugas. una adhuc victoria Carus Mettius censebatur, et intra Albanam arcem sententia Messalini strepebat, et Massa Baebius etiam tum reus erat: mox nostrae duxere Helvidium in carcerem manus; nos Maurici Rusticique visus, nos innocenti sanguine Senecio perfudit.

Agricola did not see the senate-house besieged, the senate surrounded by armed men, or in the same disaster, the butchery of so many men of consular rank, the flight and exile of so many of Rome's noblest ladies. Mettius Carus was still rated at one victory only, and Messalinus was rasping away within the Alban citadel, and Massa Baebius was still, as before, on trial. A little while and our hands dragged Helvidius to prison, before we gazed on the dying looks of Mauricus and Rusticus, before we were soaked by the innocent blood of Senecio.<sup>693</sup>

There are two problems here, both common in the ancient narratives of *maiestas* trials. Firstly, there is the issue of the "moral lens" as discussed in the section above. Events are reformulated to reflect well on the author and current political conditions. Secondly, the emotive language makes the evidence difficult to assess. Some modern scholars have therefore dismissed such accounts as exaggeration, reflecting hostility to a former emperor.<sup>694</sup> The problem with this

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<sup>693</sup> Tac. *Agr.* 45.1.

<sup>694</sup> Rogers 1965, 1960; Rutledge 2001.

interpretation is that the sources describe periods when *maiestas* trials created a climate of fear among the senatorial elite. They do this so clearly that Rudich is surely right to refuse to accept apologetic constructions of events.<sup>695</sup> However, this moralistic and emotive presentation does not create any distinctions between particular *maiestas* trials and their impact on *libertas*. This may not reflect the more intricate political reality.

The sources associate *maiestas* trials with accounts of imperial duplicity and immorality: Tiberius becomes reluctant to attend the senate because he may hear more than he wishes, and his deceitful nature makes it impossible to address him.<sup>696</sup> Gaius confuses the senate with deliberate deception. He pretends to burn incriminating evidence and encourages denunciation of Tiberius but then uses that as the basis of charges.<sup>697</sup> Domitian is damned for his hypocrisy.<sup>698</sup> Once again, the sources present the issue in moral terms. Suetonius deals with *maiestas* charges in sequences dealing with imperial *saevitia* so that the question is closely linked to individual emperor's characters.

This formulation encourages the portrayal of all defendants as martyrs and the senate as passive victims of tyranny; in fact Tacitus sees the senate's forced complicity in prosecutions as one of the outrages perpetrated against them.<sup>699</sup> This ignores the fact that the senate had been happy to accept the right of trials by their peers.<sup>700</sup> Additionally, since there was no state prosecutor, charges were made by individual senators against one another.<sup>701</sup> The first *maiestas* charges for defamation were brought against Titus Labienus and Cassius Severus. The legal

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<sup>695</sup> Rudich 1993: xiii-xiv.

<sup>696</sup> Cass. Dio 57.1; Suet. *Tib.* 70.1 for his obscure oratorical style.

<sup>697</sup> Cass. Dio 59.4, 16.

<sup>698</sup> Cass. Dio 67.2.

<sup>699</sup> Tac. *Agr.* 1-3.

<sup>700</sup> See chapter 1.

<sup>701</sup> Rutledge 2001: 179 argues that the lack of state prosecutor means the principate was an "inefficient tyranny" since it did not allow centralised, emperor-led prosecution. However, accounts of Tiberius', Gaius', Nero's and Domitian's principates suggest that the emperor had no difficulty in making his wishes known, official prosecutor or not.

details are conspicuous by their absence, since the sources are more interested in condemning the extension of *maiestas* to defamation. Yet the implication in the elder Seneca's account is that Severus himself initially accused Labienus, before he himself faced the same charge. We know that the two men were bitter enemies.<sup>702</sup> This is much more complicated than suppression by a tyrannical emperor. Senatorial enmities and personal feuds played a significant role.

When Clutorius Priscus is presented as a foolish poet, or Libo Drusus as a young man led astray by unwise friendships, their trials are presented in terms of the emperor's cruelty and the senate's coercion. This persists into modern discussions, but describing Clutorius Priscus as "a victim of his own stupidity" makes assumptions which the evidence does not support.<sup>703</sup> Levick argues that his prosecution was motivated by factional and dynastic interests, so that the senate actively pursued the case.<sup>704</sup> Even more striking is the senate's rejection of Libo Drusus: he is turned away from their homes when he seeks supporters. They vote for severe penalties after his suicide, including *damnatio memoriae* and the anniversary of his death was made a festival. The precise details are not recoverable, although it has been suggested that it should be seen against the background of a dynastic plot against Tiberius.<sup>705</sup> The evidence implies that the senate supported Tiberius in these cases, and that the presentation of the defendants as innocent victims obscures political reality.

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<sup>702</sup> Sen. *Controv.* 10. pr. 7. Bauman 1974: 28-32, discussed in chapter 1.

<sup>703</sup> Rudich 1997: 14. Rudich seeks to explain the case in terms of psychological gain from expressing disguised hostility, under the self-delusion that no one will notice if criticism is sufficiently disguised. It is difficult to reconstruct even the facts of *maiestas* trials, and the thoughts of the participants are elusive. Shotter 1972 pursues a similar approach to the trial of Libo Drusus, describing the defendant as "panicky," "melodramatic" and "immature".

<sup>704</sup> Levick 1999: 160-1; Bauman 1974: 60-62.

<sup>705</sup> Levick 1999: 149-52 argues for the seriousness of the charge, and Tiberius' genuine anxiety. She suggests that it was dynastically motivated, probably as part of a wider plot associated with Clemens' conspiracy after the death of Agrippa Postumus. Rutledge 2001: 158-62 agrees that there was a genuine conspiracy, though he dismisses the theory that Clemens' plot had any connection with Libo Drusus.

The literary sources portray a reign of terror during the later part of Tiberius' reign, with an increase in the number of *maiestas* trials particularly after the death of Sejanus. They present "good" senators as the victims of "bad" delators, but the reality is not so straightforward. Tacitus sees the death of Drusus and the rise of Sejanus as a "tipping point" for the regime becoming repressive.<sup>706</sup> Dio puts that a little later, with the death of Germanicus. Both authors show that as the emperor withdrew from public life, a desire to curry favour with Sejanus increased delation. Modern scholars have suggested that the trial of Aulus Cremutius Cordus in 25 marks a change of approach, with Bauman arguing that Sejanus exploited the defamation category of *maiestas* so that it became "a remarkable instrument of repression".<sup>707</sup> Rutledge notes that it is the first "factional" attack under Sejanus and that until this point, Tiberius had intervened to request clemency. Levick interprets it as a new type of *maiestas* charge relating to the deified *princeps*.<sup>708</sup> She suggests that "Tiberius' attitude towards the offences of 15, 17 and 25 is not inconsistent; there is more to the charges than the sharpening intolerance of an established autocrat. He meant to establish words and actions intended (*hostis animo*) to insult the deified *princeps* and to depreciate his achievement from unintentional discourtesies of no political import."<sup>709</sup>

This is helpful, because it insists on treating each case on its own terms. The literary accounts do not do that, because the formulation of "good" senators charged under "bad" emperors, obscures any distinctions between trials. If that is restored, it reveals that it is Sejanus' rise to power and the senate's readiness to turn on one another that leads to the increase in *maiestas* trials during the rest of Tiberius' principate. Division in the senate and factions centred around imperial favourites recurs when there are "clusters" of *maiestas* trials, for example after

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<sup>706</sup> Tac. *Ann.* 4.7. Cass. Dio 57.19.8 makes a similar point for the death of Germanicus, which allows the trial of Piso.

<sup>707</sup> Bauman 1974: 113.

<sup>708</sup> Levick 1999: 191-5.

<sup>709</sup> Levick 1999: 194.

the fall of Sejanus in AD 31, after the Pisonian conspiracy in 65, or after Saturninus' revolt in 89. In fact, this becomes a circular process, because instability creates a climate conducive to *maiestas* charges. Rutledge says he does not know if the series of prosecutions become the "cumulative sum of a greater evil".<sup>710</sup> This may overlook the context, since these "cumulative" trials occur at times of crisis and revolt. Not all emperors permitted this situation to arise – we find Titus dining with alleged conspirators to show there would be no revenge taken, for example.<sup>711</sup> When *maiestas* charges were brought, the emperor was not solely responsible. This is something the sources gloss over, preferring to portray a senate forced into condemning their peers.

So, for example Pliny presents a complete breakdown in the relationship between Domitian and the senate, so that being loved by the senate was "fatal" and their real feelings about someone had to remain secret to keep them from harm.<sup>712</sup> He describes the senate cowed under Domitian:

idem prospeximus curiam, sed curiam trepidam et elinguem, cum dicere quod velles periculosum, quod nolles miserum esset. Quid tunc disci potuit, quid didicisse iuvit, cum senatus aut ad otium summum aut ad summum nefas vocaretur, et modo ludibrio modo dolori retentus numquam seria, tristia saepe censeret? eadem mala iam senatores, iam participes malorum multos per annos vidimus tulimusque; quibus ingenia nostra in posterum quoque hebetata fracta contusa sunt.

We then looked to the senate but a senate which was fearful and speechless because it was dangerous to express your convictions and humiliating to repress them. What was it possible to learn at that time or what point was there in having learnt such things

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<sup>710</sup> Rutledge 2001: 179.

<sup>711</sup> Suet. *Tit.* 9.2.

<sup>712</sup> Plin. *Pan.* 62.

when the senate was summoned to be wholly wicked, wholly idle,  
 when it was kept in being to be now a laughing stock and now  
 ripe for grief? Once we became senators for many years we  
 witnessed and endured the same evils in which we then took part  
 so that our talents were blunted, broken and bruised by them,  
 affecting even our later days.<sup>713</sup>

This allows him to emphasise that this is now in the past:

breve tempus (nam tanto brevius omne quanto felicius tempus)  
 quo libet scire quid simus, libet exercere quod scimus.

There has been only a brief period (for every era of greater  
 happiness is shorter) when it has been our pleasure to come to  
 know our identity and apply that knowledge.<sup>714</sup>

The second part of Pliny's letter describes the senate's joy in resuming their duties after this repression. This does not directly deal with *maiestas* since Pliny is asking for advice on correct senatorial procedures, allegedly lost under Domitian. In fact, that is an excuse to affirm the renewed importance of the senate's role and praise the emperor's moderation. This contrast between then and now, good and bad, moral and immoral is deliberately made. The fact that it is necessary for Pliny to do this speaks volumes about the underlying tensions within the senate.

In conclusion, *maiestas* trials are a sign of wider political problems, rather than the cause. Normal business was in complete disarray, and the effects were felt beyond the immediate hearings. They formed a background to all other business in the senate, and coloured the senate's dealings with one another and with the emperor. This frightening and dangerous situation should not be minimised, and

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<sup>713</sup> Plin. *Ep.* 8.14.8-9.

<sup>714</sup> Plin. *Ep.* 8.14.10.



left a strong impression on those present. Tacitus considers ways in which communication is affected by these events, reflecting on the enforced silences of Domitian's reign and its lasting effect on people's ability to speak out.<sup>715</sup> This should, however, be balanced with awareness of widespread senatorial complicity even in times of crisis.

## 4.6 Conclusion

This chapter has considered freedom of speech in the senate, and shown that imperial tolerance varied both within and between principates. Freedom of speech was affected by the relationship between the emperor, individual senators, and the senate as a body. There were always individual variations and the relationship changed and evolved during the first century AD. This cannot be categorised solely as a "political" matter, since the emperor and senators met on social occasions as well as in the senate. In any setting, the emperor's position as ultimate patron set him apart, and so themes that emerged from the earlier discussion of etiquette, status and insult in chapters 2 and 3 have recurred. When the emperor acted as a tactful superior in his dealings with the senate, it allowed civil relations to be maintained with senators who had a vested interest in remaining on good terms with him.

The same social strategies that allowed those with unequal power to communicate with a superior govern the senate's relationship with the emperor. Since political and social standing were so closely entwined, individual speakers were concerned that proceedings in the senate enhanced their own reputation, and that of the senate as a whole. This was why it was so necessary to distinguish honourable praise of a deserving emperor from shameful sycophancy. From Pliny's efforts to position his own remarks as honourable *laudatio*, it becomes clear that this was a continuing concern. The distinctions between *laudatio* and *adulatio* were extraordinarily fine and never made absolute, so that there was a

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<sup>715</sup> Tac. *Agr.* 1-3.

real danger that any speech might end up being interpreted as *adulatio*. A speaker therefore represented all praise as honourable; even this precaution could not always ensure that later judgements would be favourable. Retrospective assessments were dangerous because they could be used to reinforce the current speaker's own *libertas* and another emperor's affability. This means that care is needed in interpreting praise as contemporaries intended it.

In political as well as social circumstances, fear of giving offence affected what was said. At times of crisis, when the emperor was not dealing tactfully with the senate, it was necessary to speak carefully to avoid giving dangerous offence. While we should be aware that there was a climate of fear when *maiestas* trials occurred frequently, it should also be noted that this happened at times of wider political problems. It is helpful to understand individual *maiestas* trials on their own terms, so that some may have been justified against guilty defendants, and that all of them represent charges brought by senators against senators. The primary sources are inclined to treat all such trials as the result of imperial oppression, which obscures the extent of delation among senators. This situation was exacerbated by dynastic and political faction, which manipulated the relationship between the emperor and the senate for individual advantage. Once again, retrospective assessments deliberately contrast an oppressive past with a happier present, whether or not that is justified. While we should not underestimate the effect of clusters of *maiestas* trials, they should be understood as symptoms rather than the cause of suppression.

Tacitus' claim that the principate and *libertas* are reconciled under Nerva and Trajan needs to be interpreted carefully, with an understanding that political freedom of speech was always at the emperor's discretion.<sup>716</sup> What Tacitus describes is a resolution of the emperor's paradoxical position with regard to the senate, which employs many of the wider protocols for social relationships

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<sup>716</sup> Tac. *Agr.* 3.1. et quamquam primo statim beatissimi saeculi ortu Nerva Caesar res olim dissociabile miscuerit, principatum ac libertatem, augeatque cotidie felicitatem temporum Nerva Traianus.

between inferiors and a superior. A successful equilibrium has been reached, in which the emperor demonstrates his *humanitas* and permits the senate their *dignitas*. As an *optimus princeps*, Trajan allows the senate to keep their own house in order and to speak openly, if not freely, while they do so. In return, the senate can have confidence that they enhance their own status when they address an honourable emperor.

## 5: Popular protest and freedom of speech

### 5.1 Introduction

Elite accounts of “popular” protest in the early principate are partial and prejudiced, either ignoring popular freedom of speech or presenting it in relation to elite manners and morals.<sup>717</sup> So, for example, when Quintilian observes that a certain coarseness (*sermo lasciva*) is not unseemly for humble persons (*humiles*), this is meant to emphasise the contrast with more appropriate behaviour among the elite, revealing far more about elite attitudes than those of the *humiles*.<sup>718</sup> Tacitus says that the city populace (*plebs urbis*) responded with delight to Nero’s stage performance:

crederes laetari, ac fortasse laetabantur per incuriam publici flagitii.

You might have supposed them to be rejoicing; and possibly rejoicing they were, without a care for the national dishonour.<sup>719</sup>

Their behaviour provides a contrast with that of visitors from the country, but Tacitus tells us singularly little about the reason why the plebs responded as they did. Mentioning them permits him to moralise about imperial misbehaviour. In this literary evidence, the voices of the non-elite majority are filtered through the elite minority.

Another difficulty is that elite sources are not concerned with making distinctions among the non-elite, portraying them as a homogeneous and often contemptible mass.<sup>720</sup> Modern scholars have sought to distinguish more clearly between rural

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<sup>717</sup> Toner 2009: 1-10 on differences between elite and popular culture and problems of evidence. Also Horsfall 2003: 20-30.

<sup>718</sup> Quint. *Inst.* 6.3.28.

<sup>719</sup> Tac. *Ann.* 16.4.4.

<sup>720</sup> Yavetz 1969: 1-7.

and urban poor, slave and free, artisan and beggar.<sup>721</sup> The observation that society is made up of individual members, with their own role and plans is a helpful one, emphasising that someone's concerns and loyalties may not necessarily be consistent, but alter with circumstances and the company kept.<sup>722</sup> Recent attempts to distinguish between levels of poverty and aspiration among the non-elite are beyond the scope of this enquiry, but they demonstrate that, where possible, the non-elite should be considered on their own terms.<sup>723</sup> The elite sources present an undifferentiated *turba* shouting in the amphitheatre or οἱ πολλοί posting rude notices on walls. This evidence needs to be assessed to see if it can be determined whether such protests were genuinely “popular” or whether they remained the domain of a limited section of society, albeit a wider one than the senatorial and equestrian classes.

Since most of the literary evidence for popular protest refers to events at Rome, this study will focus on the urban non-elite. There are three areas where there is sufficient information to draw meaningful conclusions – popular demonstrations, rumour and gossip, and graffiti and pamphleteering. The chapter will begin by considering freedom of speech in demonstrations at theatres, amphitheatres and the Circus. At times, these need to be differentiated – for example, seating was not arranged hierarchically at the Circus. When it is not necessary to distinguish a particular venue, they will be referred to as “shows” for convenience, encompassing all the locations where entertainments were provided – gladiatorial games, theatrical performances and chariot racing. Next, the role of rumour and gossip in political life, and whether there is evidence for manipulation or control of these will be discussed. The final section of the chapter will investigate informal written protests, by which is meant the use of graffiti, *dipinti* and pamphleteering for political comment.

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<sup>721</sup> Alföldy 1985: 133-46. Winterling 2009: 17-25 discusses challenges to Alföldy's “pyramid” of social hierarchy but notes the importance of a “hierarchy of prestige”. Morley 2006.

<sup>722</sup> Winterling 2009: 24-5. Horsfall 2003: 27.

<sup>723</sup> Morley 2006. Scheidel 2006. Scott 1990: 20.

Popular protest was made against the emperor and the elite and occurred at venues where the elite were also present, so that it is not possible or desirable to discuss the non-elite in isolation. So, for example, it is sometimes suggested that demonstrations at shows are best considered as a form of festival licence.<sup>724</sup> If this is to be explored, then imperial presence at those shows needs to be examined, as does the emperor's reaction to protests. The role of patronage raises the further question of whether popular demonstrations were manipulated by those with vested interests or whether they were spontaneous expressions of public discontent. The final question to be addressed is whether there is evidence for the control of popular protest. This chapter will investigate the intention and impact of non-elite political protest at Rome, and the response to it.

## 5.2 Theatre, circus and games

Theatres, amphitheatres and circuses are mentioned frequently in the early imperial sources; modern studies have examined their importance in Roman culture and their role in establishing Roman identity.<sup>725</sup> Recently, scholars have discussed the experience of attending shows in terms of “watching the watchers”, noting that interaction extended beyond stage or arena so that the emperor and the crowd played their own role in a kind of meta-performance.<sup>726</sup> However, care should be taken that interpretation does not become so removed from the spectators' experiences that it obscures practical questions about how far freedom of speech operated and whether there was any form of control. There is a particular difficulty, because studying shows through the medium of written

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<sup>724</sup> E.g. Purcell 1996: 804-5, Toner 2009: 111-2.

<sup>725</sup> Dupont 1985: 19-34; Gunderson 1996.

<sup>726</sup> Henderson 2002; Gunderson 1996. Flaig 2003 argues for a ritual dimension in public communication in the Roman Republic, through which the elite are able to win obedience from the people, including at gladiatorial games. This has not won universal support, see Flower 2003. Flaig 2007 deals further with gladiatorial games as a form of political and social ritual. Flaig's ideas raise interesting questions about not only what was said but how it was said and received, but a full discussion is beyond the scope of this thesis. This is partly because of the Republican context of most of the argument but also because Flaig extends his enquiry to the impact of political ritual not only as a form of communication but also in shaping cultural development.

texts and archaeological evidence does not recreate the experience of a live performance. For example, since shows were given on designated holidays, when normal business was suspended, this affected the spectators' mood and encouraged boisterousness.<sup>727</sup> Seneca describes being swept up in the games and losing sight of his philosophical principles, effectively becoming part of the crowd, where individual opinions become subsumed in a mass response.<sup>728</sup> His snobbery needs to be taken into account because it typifies the dominant elite attitudes, which regarded enthusiasm for shows as the province of the lower classes, but none the less, the anecdote underlines that a show was not a static event or a theoretical exercise. The vast crowd who gathered were affected by the occasion.<sup>729</sup> More mischievously, Ovid reminds us that different people had different agendas when they attended shows, to see and be seen, to place bets, to meet their friends, and pick up girls.<sup>730</sup> These factors create the circumstances for spontaneous, unscripted remarks, which will vary from one show to the next.

In terms of freedom of speech, shows provided a venue where those with political power were accessible to a wide cross-section of the population. The exact size and nature of the audience varied. Theatres had smaller capacity, while at the amphitheatre and Circus, the crowds were far larger. The Coliseum could accommodate some 40,000 to 45,000 spectators, the Circus Maximus 250,000.<sup>731</sup> Modern studies have shown that these venues were "political" in that they provided an opportunity for *princeps* and people to meet, effectively replacing the *comitia* and *contiones* of Republican Rome.<sup>732</sup> In this context, political communication could be explicit, taking the form of a direct announcement, appeal or response from the emperor (or presiding magistrate) to the crowd or through appeals from the crowd to the emperor. Communication could also be

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<sup>727</sup> Dupont 1985: 44-5.

<sup>728</sup> Sen. *Ep.* 7. Cameron 1976: 190. Yavetz 1969: 18-22.

<sup>729</sup> Cameron 1976: 183-4 argues that the lack of information about rioting at shows is because the elite sources were not interested.

<sup>730</sup> Ov. *Ars Am.* 1.135-62.

<sup>731</sup> Rawson 1991: 520-5. Wiedemann 1992: 21, Cameron 1976: 162.

<sup>732</sup> Purcell 1996: 804-5.

implicit, made through the occasion or behaviour at the show. The very provision of a show demonstrated continuity with the magistrates of the Republic, and showed that imperial wealth and political stability allowed performance to flourish. The theatre could be used as a venue to mark particular honours – Augustus named a theatre after Marcellus and had a golden image of him, a crown, and a curule chair set amongst the officials in charge.<sup>733</sup> Dio notes Tiberius' exceptional dedication of a statue to Sejanus in the theatre during his lifetime.<sup>734</sup> The audience would understand these gestures had political implications, even though they were not directly part of the show. Less subtly, Augustus led Parthian hostages through the middle of the arena and seated them prominently above his own seat.<sup>735</sup> The effectiveness of this kind of political performance is suggested when Suetonius includes Tiridates' entrance into the city among the shows given by Nero.<sup>736</sup>

The emperor's highly visible position in the audience provided an opportunity for political display. Augustus countered criticism of his laws on marriage reform by appearing with the children of Germanicus.<sup>737</sup> Claudius took a similar opportunity when he freed a gladiator in response to the pleas of the man's sons.<sup>738</sup> He had a placard carried around pointing out the benefits of having children, even for a gladiator. Claudius also took Britannicus on his lap in a show of support for his son's position as heir.<sup>739</sup> Hierarchical seating arrangements underlined this unspoken message. The theatre and amphitheatre represented Roman society in microcosm with the emperor in his rightful place amongst the people.<sup>740</sup> Implicit communication mattered sufficiently that the sources give

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<sup>733</sup> Cass. Dio 53.30.5-6. Cass. Dio 58.4.4 has another reference to gilded chairs placed in the theatre as an honorific measure.

<sup>734</sup> Cass. Dio 57.21.3.

<sup>735</sup> Suet. *Aug.* 43.4.

<sup>736</sup> Suet. *Ner.* 13.

<sup>737</sup> Suet. *Aug.* 34.

<sup>738</sup> Suet. *Claud.* 21.5.

<sup>739</sup> Suet. *Claud.* 27.2.

<sup>740</sup> Suet. *Aug.* 44 attributes reforms to an incident where a Senator was insulted at Puteoli by not being awarded a seat; concern not to unduly honour freedmen is also cited. See Rawson 1991 for



details not only of the shows the emperors staged, but also of their behaviour during them.<sup>741</sup> Providing shows allowed the emperor to demonstrate that he understood and shared the crowd's enjoyment of spectacle. Failing to pay full attention was criticised.<sup>742</sup> Augustus and Trajan were praised for appearing at and openly enjoying shows. At the games held to celebrate victory at Actium, Augustus sent Agrippa as a deputy when he was too unwell to attend.<sup>743</sup> Otho and Vitellius are both alleged to have attended theatres to gain favour with the masses; despite his notorious reluctance to spend money, Vespasian gave generous subsidies to actors.<sup>744</sup>

The crowd used applause to express their views of the presiding magistrate as he entered the venue. This had republican precedents, and for example Cicero specifically asks Atticus about the crowd's response as a measure of gauging the extent of popular support.<sup>745</sup> Gaius executed Ptolemy allegedly because his purple cloak attracted so much attention when he entered the theatre. This may or may not be based on fact, but it is clearly considered believable, and demonstrates that the crowd's response to someone as they entered or left the show enhanced or diminished status.<sup>746</sup> Protests could be more explicit, through demands for increases in the wheat ration or for the abolition of particular taxes,

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detailed discussion of how seating was allocated at the games and theatre, and the relevant legislation. Gunderson 1996: 123-6 discusses the symbolism of the seating plan as "an ideological map of the social structure of the Roman state", biased in favour of the elite. Henderson 2002: 46 argues against this but fails to account for the fascination in the historical sources with seating arrangements, so that it is noted as part of general policy not only in discussions of shows, for example Tac. *Ann.* 15.32.

<sup>741</sup> E.g. Suet. *Aug.* 45-6, *Calig.* 18, *Claud.* 21.5-6, *Tit.* 8.2. Cass. Dio 60.7. Gunderson 1996: 123 notes that Suetonius uses imperial behaviour at games as a way of revealing imperial character.

<sup>742</sup> Suet. *Aug.* 45 on disapproval of Caesar writing letters and answering petitions at the Circus. Cameron 1976: 175-9 on the public relations aspect of giving shows. Dupont 1985: 64-5 on "bread and circuses" and the importance of otium.

<sup>743</sup> Cass. Dio 53.1.6.

<sup>744</sup> Cass. Dio 63.8.2; 64.7. Suet. *Vesp.* 19.

<sup>745</sup> Cic. *Att.* 14.2.1. Cicero also notes that the people hissed Hortalus, *Fam.* 8.2.1. Popularity at the games and theatre also at *Sest.* 116-9.

<sup>746</sup> Suet. *Calig.* 35.1.

and the evidence suggests that they tested an emperor's ability to respond.<sup>747</sup> Augustus' quick wit stood him in good stead, but even he remarked on the problems of popular pressure.<sup>748</sup> Tiberius disliked this so much that he avoided shows altogether.<sup>749</sup> Gaius responded with force and tried to silence the crowd through intimidation and on another occasion withdrew from the games completely.<sup>750</sup> Domitian had a herald order silence when the crowd begged him to restore the banished orator Palfurius Sura.<sup>751</sup>

Modern scholars disagree over how extensive and how "political" these protests were.<sup>752</sup> It is clear that disorder was a recurring problem, since soldiers were stationed at the theatre and the suppression of riots and the banning and restoration of actors is a constant theme in the sources.<sup>753</sup> It may be that by isolating one element in the crowd's response, as "political", there is a risk that we are still viewing protest in elite terms. Purcell points out that the whole of Roman society, not just the elite, was status-conscious. "The benefits which the plebeians enjoyed were not charity to keep them alive, but a bonus to denote their status. Part of that status-symbolism was a degree of political licence, which stood beside the lavishness of the games and the grandeur of the buildings."<sup>754</sup> Horsfall suggests that the crowd could, when they wanted, disrupt a show to

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<sup>747</sup> E.g. Tac. *Ann.* 6.13 (corn), Cass. Dio 59.28.10 (tax). Cameron 1976: 38, 162 suggests that some of these appeals may have been "organised spontaneity" and notes the moral pressure on the emperor to comply.

<sup>748</sup> Cass. Dio 55.9.3.

<sup>749</sup> Suet. *Tib.* 47.1.

<sup>750</sup> Cass. Dio 59.13.

<sup>751</sup> Suet. *Dom.* 13.1. Palfurius Sura received the prize for oratory, presumably *in absentia* suggesting that there may be more to this protest than meets the eye.

<sup>752</sup> Dupont 1985: 119 argues that disturbances at shows were politically motivated. Yavetz 1969: 12 suggests that more usually the crowd "contented themselves with bandying shrewd jokes which had no political significance" and were "passive" and "non-violent". Slater 1994 argues that violence was motivated by the self-indulgence of young, disaffected, and apolitical spectators.

<sup>753</sup> E.g. Tac. *Ann.* 13.24 Nero removes troops from the theatre but 13.25 restores them amid other measures to control public disorder. Suet. *Ner.* 26.2, Tac. *Ann.* 13.25.2, Cass. Dio 61.8.1-2 disapprove of Nero for encouraging theatre riots. For violence, see e.g. Tac. *Ann.* 14.17 on the riot between Pompeians and Nucerians. Suet. *Dom.* 3 punishes too-enthusiastic supporters, 7.1 bans actors from the public stage.

<sup>754</sup> Purcell 1996: 805.

embarrass the sponsor through irrelevant or impossible demands.<sup>755</sup> This provides a useful reminder that the crowd are participants in a shared experience, rather than passive recipients of imperial largesse, and they have their own perspective on events. Shows provided a venue to complain about unpopular measures, but it is not clear that was a reason to attend in the first place. Graffiti provide evidence for the popularity of gladiators and actors, with score cards of gladiatorial victories and “tagging” of favourite actors.<sup>756</sup> The audience at shows contained passionate fans, just as dedicated supporters of today follow their chosen teams or go to a particular singer’s concerts. The evidence suggests that actors, like chariot racers and occasionally gladiators, stirred up strife, even physical violence among their fans both inside and outside the show. Conflict was more likely to be related to the show or the performers than to imperial policy. This is a public order problem, destabilising and dangerous, but it is not a direct political protest.

In fact, political protests at shows may be opportunistic and reflect wider difficulties. Tacitus reports that Tiberius took measures to control actors’ behaviour during the transition from Augustus’ principate, a time of political instability.<sup>757</sup> Dio records controls imposed in AD 23, as Sejanus’ influence grew after Drusus’ death.<sup>758</sup> When the crowd demonstrated against Tigellinus, that occurred against a background of unrest after the death of Nero.<sup>759</sup> In such circumstances banning actors and taking measures for control are a response to

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<sup>755</sup> Horsfall 2003: 60-3.

<sup>756</sup> E.g. Graffiti from Pompeii includes *CIL* IV 3867 “Paris, pearl of the stage”, *CIL* IV 2193 “Good fortune to the Pureolians, good luck to all Nuceriaans, the executioner’s hook to the Pompeians”, *CIL* IV 1421 for results of gladiator fights, 10273 with a longer list of results, illustrated with stick figures. See Cooley and Cooley 2004: 44-60, 70-2 for further selected examples and brief discussion.

<sup>757</sup> Tac. *Ann.* 1.77.

<sup>758</sup> Cass. Dio 57.21.3; Suet. *Tib.* 37.2.

<sup>759</sup> Tac. *Hist.* 1.72. Here theatres and circuses form the site of popular demonstrations.

avoid stirring a volatile crowd to trouble.<sup>760</sup> This is why the banning of actors and suppression of shows often coincides with times of general uncertainty.

Interpreting imperial attempts to control actors, especially banishing them and suppressing shows, is complicated because of the ambiguous social position occupied by performers. Dupont discusses their “star” status which gave them fame and often fortune; no wonder the elite authors are suspicious and frequently criticise the excessive influence of actors or chariot-drivers.<sup>761</sup> It does not help our understanding that the source evidence, while entertaining, is more suited to a tabloid newspaper than serious history. Actors are found having affairs, sometimes unwillingly, with empresses and other elite ladies. They are seated in places of honour at imperial dinner parties and caught up in political intrigues.<sup>762</sup> It seems clear that such performers exerted influence far beyond the stage and the immediate support of the crowd at shows. Imperial disapprobation is always expressed in moral rather than political terms – seducing women, causing riots, encouraging drunkenness – but banning people from visiting actors or gathering around them suggests that the problem was not only with behaviour at the shows themselves, but with the performers’ influence beyond the theatre or Circus.

Tacitus reports that Percennius, who encouraged rebellion in the Pannonian army after Augustus’ death was:

dux olim theatralium operarum, dein gregarius miles, procax  
lingua et miscere coetus histrionali studio doctus.

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<sup>760</sup> E.g. Tac. *Ann.* 1.77. Suet. *Dom.* 7.1 has actors banned from the stage but allowed to perform in private houses. Yavetz 1969: 11-2 discusses theatre riots in AD 15 and notes that Gaius sending soldiers against the Circus crowd in AD 40 was a very rare occurrence of forceful suppression.

<sup>761</sup> E.g. Suet. *Vit.* 12. Dupont 1995: 98-102.

<sup>762</sup> E.g. Suet. *Dom.* 3.1, 15.3; Cass. Dio 59.5.2, 67 3; Tac. *Ann.* 11.36.

in his early days the leader of a *claque* at the theatres, then a private soldier with an abusive tongue, whose experience of stage rivalries had taught him the art of inflaming an audience.<sup>763</sup>

Tacitus is, of course, a hostile witness, but Percennius' early behaviour is not described in political terms. Instead, the skills he learnt about "stage rivalries" are only later turned to the more serious business of rebellion. Horsfall suggests that the plebs might learn chants and songs at *collegia* dinners so that *clagues* had practised by the time they came to the theatre.<sup>764</sup> There is no real evidence but this speculation is a reminder of our limited knowledge of plebeian life. The role of a *dux theatralium operarum* remains opaque, but it was clear it was influential and not necessarily centred on political protest. There is other evidence of "clagues" dictating audience response, for example under Nero.<sup>765</sup> On this occasion, the organisation of the *clagues* is officially sanctioned, and soldiers encourage appropriate support for the emperor. This is a problematic example, because the emperor's presence on stage distorts the normal relationship between crowd and emperor. Tacitus asserts that seeing Nero perform pleased the crowd.<sup>766</sup> It is hard to know how accurate this representation is, since it is informed by Tacitus' disapproval. The sources universally condemn public performances by the elite, although taking part in local festivals was considered acceptable.<sup>767</sup> Dupont describes elite attitudes as "schizophrenic" because they encompassed a fascination with performance, even a desire to take part, with distaste which extended as far as severe legal penalties. One appearance was enough to damn someone as *infamis*.<sup>768</sup> Moral attitudes and growing fascination with performance are beyond the scope of this study, but we may note that in

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<sup>763</sup> Tac. *Ann.* 1.16.3.

<sup>764</sup> Horsfall 2003: 41-2.

<sup>765</sup> Suet. *Ner.* 20.3; Tac. *Ann.* 14.15.5. Bartsch 1994: 9. Potter 1996 discusses *clagues*, crowd response and manipulation of opinion, mostly in terms of the later empire, concluding that chanting was a plebeian occupation and more likely to be positive than negative.

<sup>766</sup> Tac. *Ann.* 16.4.4.

<sup>767</sup> Tac. *Ann.* 16.21.

<sup>768</sup> Dupont 1985: 95-9; 123-8; Rudich 1993: 41-3.

terms of freedom of speech, when the elite, and particularly the emperor, take an active part in performance, it creates a problem for the non-elite audience's response. When an emperor performs, he must, by definition, be the best, and so the normal enthusiasms of the crowd have to be altered to accommodate that role. When the emperor acts on stage, that becomes more important than the show as a whole and any response is automatically politicised. This is shown when honest rustic visitors are not able to keep up with the complicated forms of applause for Nero and get in trouble as a result.<sup>769</sup>

In fact, the most overtly "political" form of crowd response in the theatre was taking up a line of a play and treating it as commentary on a current political situation. Modern scholars have noted that the allusion need not be intentional – for example when Galba was newly appointed emperor, all the spectators joined in with a verse of an Atellan farce "Here comes Onesimus from his farm".<sup>770</sup> There is no suggestion that this was written for the occasion; the crowd saw their chance for comic effect. Allusion and crowd response have been discussed by modern scholars in terms of its impact upon authors. It is suggested that they "lost control" of their work when the crowd interpreted lines against authorial intention, and that there was thus a danger that they would give offence when none was intended. However, suppression occurs extraordinarily rarely in the context of the show itself. Augustus reacted angrily when the people applauded him at the line "O just and gracious Lord!" (*dominus*) though they must have intended a compliment.<sup>771</sup> Gaius objected to being hailed as a "Young Augustus".<sup>772</sup> Gaius also burned a writer of Atellan farces for "a line of ambiguous meaning" and Nero exiled the actor Datus for implying a reference to

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<sup>769</sup> Tac. *Ann.* 16.5.

<sup>770</sup> Suet. *Galb.* 13, *Tib.* 45 has a similar story about the crowd mocking Tiberius with a line in an Atellan farce. Bartsch 1994: 75-80 discusses lack of intention and the role of audience response.

<sup>771</sup> Suet. *Aug.* 53.1.

<sup>772</sup> Cass. Dio 59.13.6. Domitian, on the other hand, enjoyed such salutation, according to Suet. *Dom.* 13.1.

the deaths of Claudius and Agrippina by blatant miming.<sup>773</sup> One of the charges against the younger Helvidius was that he wrote a stage farce implying criticism of Domitian's divorce from his wife.<sup>774</sup> These represent extraordinarily few reported incidents over a period of more than a century, when shows were held on at least 65 days a year. The very fact that shows retained their importance, that theatres and amphitheatres were built and restored and the number of festival days steadily increased suggests that the benefits outweighed the risks of perceived criticism.<sup>775</sup>

Dio preserves an anecdote about Claudius where he thinks the emperor showed surprising licence:

τοὺς μέντοι ἀλλοτρίους ἀπελευθέρους ὁ Κλαύδιος, εἴ που  
κακουργοῦντας λάβοι, δεινῶς τιμωρῶν, τοῖς ἰδίοις οὕτω  
προσέκειτο ὥσθ' ὑποκριτοῦ τινος ἐν τῷ θεάτρῳ ποτὲ τοῦτο δὴ τὸ  
θρυλούμενον εἰπόντος ὅτι 'ἀφόρητός ἐστιν εὐτυχῶν μαστιγίας,'  
καὶ τοῦ τε δήμου παντὸς ἐς Πολύβιον τὸν ἀπελεύθερον αὐτοῦ  
ἀποβλέψαντος, καὶ ἐκείνου ἐκβοήσαντος ὅτι ὁ αὐτὸς μέντοι  
ποιητὴς εἶπεν ὅτι 'βασιλεῖς ἐγένοντο χοίρι πρὶν ὄντες αἰπόλοι,'  
οὐδὲν δεινὸν αὐτὸν εἰργάσατο.

[Claudius] was very lenient with his own [freedmen], as the following incident will show. Once when an actor in the theatre recited the well-known line, "A prosperous whipstock scarce can be endured," and the whole assemblage thereupon looked at Polybius, the emperor's freedman, the latter shouted out: "Yes,

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<sup>773</sup> Suet. *Calig.* 27.4 Atellanae poetam ob ambigui ioci versiculum media amphitheatri harena igni cremavit; *Ner.* 39.3.

<sup>774</sup> Suet. *Dom.* 10.4

<sup>775</sup> Cameron 1976: 170-3. Nippel 1995 and Dupont 1985: 47-9 argue for permitted licence. Bartsch 1994: 1-2 sees greater grounds for imperial concern and need for control. Dupont 1995: 62-3 on the increase in the number of festival days under the early empire.

but the same poet said: ‘Who once were goatherds now have royal power.’” Yet Claudius did him no harm.<sup>776</sup>

In her discussion of this incident, Bartsch suggests that the audience are creating allusions which go beyond the stage or the text. This gives them a distinct and alarming role in creating hostile subtexts to attack the emperor or the elite.<sup>777</sup> However, it is not at all clear that this incident shows more than unscripted repartee, appropriate to the normal routine of the theatre. On another occasion, Dio reports that the crowd were fed up with Messalina keeping Mnester away from the theatre and that:

οὕτω γάρ που δεινὸς σοφιστὴς ἐν τῇ ὀρχήσει ἦν ὥστε τοῦ ὁμίλου  
μεγάλῃ ποτὲ σπουδῇ δρᾶμά τι αὐτὸν ἐπιβόητον ὀρχήσασθαι  
δεομένου, παρακῦψαί τε ἐκ τῆς σκηνῆς καὶ εἰπεῖν ὅτι ‘οὐ δύναμαι  
τοῦτο ποιῆσαι: τῷ γὰρ Ὀρέστη συγκεκοίμημαι.’

Indeed he was such a clever actor that once, when the crowd with great enthusiasm begged him to perform a famous pantomime, he put his head out from behind the stage and said: “I cannot comply, for I am abed with Orestes.”<sup>778</sup>

This was clearly taken as no more than an excellent joke and even when he found out about the affair Claudius was inclined to spare Mnester. On another occasion, Claudius almost caused abandonment of a show, when he replied to the gladiators’ traditional greeting: “Hail, emperor, those who are about to die salute thee”, by saying “Or not.” The gladiators promptly claimed this meant they had been freed.<sup>779</sup> The point of the anecdote is Claudius’ foolishness in his reply, effectively mishandling the repartee between gladiators and president. These

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<sup>776</sup> Cass. Dio 60.29.2-4.

<sup>777</sup> Bartsch 1994: 75-80, and notes that intention is more important and more easily discernible at recitations, discussed below.

<sup>778</sup> Cass. Dio 60.28.5. I have not found an analysis of this passage, but take it to be a joking reference to his affair with Messalina.

<sup>779</sup> Suet. *Claud.* 21.6.



various incidents suggest that witty, even barbed, exchanges between the participants in a show and the audience or emperor were so normal as to be unthreatening. Even the austere Tiberius ignored jokes about his baldness at the Floralia.<sup>780</sup>

Dupont suggests that the popular nature of shows meant that literary “high” culture was reserved for private theatricals and recitations, creating a split between popular spectacle and literary culture.<sup>781</sup> This may perhaps overstate the case, but it is notable that when Maternus refuses to tone down his *Cato* and promises a worse *Thyestes* or when Mamercus Aemilius Scaurus causes offence with his *Atreus*, these are works intended for an elite audience.<sup>782</sup> In this more exclusive context, authorial intention, audience interpretation and response take place in a more intimate setting and among people with political influence. If *recitatio* before an invited, elite audience is distinguished from more public performance, that helps to explain why there was more licence at public shows. At shows, a more helpful comparison may be made with a modern football crowd whose unscripted chants veer between the witty, the politically astute and the offensive.<sup>783</sup> The crowd were making the most of their day out, and a frisson of danger may have added to the atmosphere. This cheerful attitude is attested when Claudius celebrated Secular Games in AD 47, on the grounds that Augustus had miscalculated in holding them in 17 BC. The crowd, some of whom had been present then roared with laughter at the invitation to games “which no one had ever seen or would ever see again”.<sup>784</sup> Interpretation must be made in the context of the occasion because the crowd and performers encourage one another’s responses and react spontaneously. Such comedy need not be

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<sup>780</sup> Cass. Dio 58.19.1-2.

<sup>781</sup> Dupont 1985: 413-5.

<sup>782</sup> Tac. *Dial.* 3 (Maternus), Tac. *Ann.* 6.29.3-4, Cass. Dio 58.24.3-5 (Scaurus).

<sup>783</sup> Henderson 2002 touches on the analogy of attending a football match, but his discussion of the Circus is a literary and theoretical one and does not explore the impact of crowd response or repartee.

<sup>784</sup> Suet. *Claud.* 21.2. The chronology is somewhat problematic, since a child old enough to remember the games under Augustus would be in his sixties by then, but is just credible as a joke. The suggestion that some of the actors took part in both celebrations is rather harder to believe.

verbal – Datus made gestures of swimming and choking at lines about “goodbye mother, goodbye father”, so turning them into a popular joke against Nero.<sup>785</sup>

This was misjudged and led to his exile, but it is not enough to show that it was premeditated as deliberate political protest. Equally, when modern scholars note the problems with “uncontrollable subtexts” or “theatricalization” of Roman political life, it is far from clear that these ideas reflect the situation found at an actual performance. These ideas are more appropriate to smaller scale, more formal communication when intention and response may be carefully scrutinised.<sup>786</sup>

During any show, there was very little that could be done about crowd reaction without appearing tyrannical. That negated the benefits of appearing at or sponsoring the show in the first place. The more frequent references to emperors punishing or banishing actors, or issuing edicts to curb insults against the elite may represent an attempt to impose control through appropriate measures *outside* the context of the actual performance.<sup>787</sup> One of the measures of a “bad” emperor was tyrannical behaviour with regard to shows, suggesting that imposing control during the show itself was resented. Gaius throwing members of the crowd into the arena, and refusing to have awnings drawn for shade is an obvious example, and Suetonius sees rioting caused by his deliberate disruption to the allocated seating as equally disgraceful.<sup>788</sup> The problem is not only with such arbitrary actions in themselves, but that they spoil people’s normal enjoyment of the show. The relationship between the crowd and the emperor and imperial court is a complicated one, and the plebs did not see themselves as passive partners.

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<sup>785</sup> Suet. *Ner.* 39.3.

<sup>786</sup> Rudich 1997: 11; Bartsch 1994: 25-30, 66-9.

<sup>787</sup> Suet. *Aug.* 45 3-4 on Augustus acting against perceived outrages – a matron visiting an actor with her hair cut short and an actor banished for pointing at a spectator who hissed at him. Tac. *Ann.* 11.13 on Claudius issuing edicts to prevent insults against the elite in the theatre. Horsfall 2003: 42-3 assumes the emperor wants to control allusion but is ineffectual.

<sup>788</sup> Suet. *Calig.* 26. 4-5, 54-5. Also Cass. Dio 59.5.4, Suet. *Calig.* 13 for angry response to the crowd and excessive support for a particular gladiator or actor; similarly, Suet. *Dom.* 10. Winterling 2011: 79-81 offers “rational” explanations for Gaius’ actions, but this does not obviate Suetonius’ point that the show was spoiled.

Modern scholars suggest that where they show gratitude for a show, or cheer the emperor or his family, there is a strong element of self-interest, even deliberate manipulation, to encourage even more generosity towards the crowd.<sup>789</sup> Shows provided an opportunity to confront the emperor, or cheer for a popular decision, but the show itself was important to the non-elite. Non-elite demonstrations at shows reflect non-elite concerns, which were not always those of the elite minority.

### 5.3 Gossip, rumour and popular demonstrations

Modern anthropological and sociological studies define gossip as “informal” communication, subject to its own rules and moral code. One of its functions is to define socially acceptable behaviour for a group and Hunter stresses that: “private as its subject may appear, gossip requires a public setting to be effective. For gossip is about reputation. While asserting the common values of the group, it holds up to criticism, ridicule, or abuse those who flout society’s or the community’s accepted rules.”<sup>790</sup> This has obvious relevance for early imperial Rome, where hierarchical structures and concern for reputation underlie social relationships. Toner suggests that preoccupation with status was not restricted to elite circles. Instead, it was shared across social boundaries, and Toner draws upon anthropological evidence to assert that “gossip served to keep people in their place, at bay and conforming to what was expected of them”.<sup>791</sup> He includes in this category the risk of being named in derogatory graffiti and “charivari” (rough music) through which neighbours would punish perceived misbehaviour. These are attractive suggestions for the role of gossip in plebeian culture.

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<sup>789</sup> Purcell 1996: 808-9. Toner 2009: 33-6. Scott 1990: 33-6 on subordinate groups’ “active manipulation of rituals” for their own advantage as an “art form” in which they take pride.

<sup>790</sup> Hunter 1990: 300. Hunter examines the transmission of gossip in Athens, but much of his argument can be related to early imperial Rome. Nippel 1995: 34-46 discusses the role of popular opinion in popular justice, and charivari but there is little evidence for the period covered by this study.

<sup>791</sup> Toner 2009: 12-27. Scott 1990: 131, 142-5 makes the same point in a more general context.

In the context of early imperial Rome, gossip and rumour had a particular “political” function, especially during times of crisis. Tacitus tells us that after Galba’s death in AD 69:

trepidam urbem ac simul atrocitatem recentis sceleris, simul  
Othines mores paventem novus insuper de Vitellio nuntius  
exterruit, ante caedem Galbae suppressus ut tantum superioris  
Germaniae exercitum descivisse crederetur. tum duos omnium  
mortalium impudicitia ignavia luxuria deterrimos velut ad  
perdendum imperium fataliter electos non senatus modo et eques,  
quis aliqua pars et cura rei publicae, sed vulgus quoque palam  
maerere. ... erant qui Vespasianum et arma Orientis augurarentur.

Rome was in a state of excitement and horror-struck not only at the recent outrageous crime, but also at the thought of Otho’s former character. Now it was terrified in addition by news with regard to Vitellius, which had been suppressed before Galba’s death, so the citizens believed that only the army of Upper Germany had mutinied. Then the thought that two men, the worst in the world for their shamelessness, indolence and profligacy had apparently been chosen by fate to ruin the empire caused open grief not only to the senators and knights who had some share and interest in the state, but even to the common people. ... Some were speculating on Vespasian and the armies of the east.<sup>792</sup>

Tacitus portrays this crisis through rumours, which operate across all social levels. It would be easy to dismiss this as a literary device, especially when Tacitus puts words into people’s mouths, but it is more likely to reflect a world where people relied on informal communication to navigate difficult political situations. Official announcements cannot be trusted – Galba had suppressed

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<sup>792</sup> Tac. *Hist.* 1.50.

news of mutiny – and there are few reliable ways of finding out what is going on. There is no media to report events and communications outside the capital are difficult and slow. The confusion creates a perfect situation for rumour to spread because people wanted to know what was happening and lacked alternative sources. These are “political” matters but they affect the safety of all levels of society. Tacitus tells us that one of his own motivations in writing history was to correct ill-informed gossip.<sup>793</sup> He criticises credulous people who enjoy widespread and unlikely stories (*divulgata atque incredibilia*), and assumes the role of the informed source, the man with authoritative answers. The cumulative effect of Tacitus’ use of “gossip” reveals its importance in a city where news was fuelled by rumour. There are hints of this process in Pliny’s letters when he represents himself as a concerned observer, recording events in Rome for his friends elsewhere.<sup>794</sup> It is part of their role as senators and men of letters to repeat and evaluate gossip.

A letter from Tiberius to the senate shows he thought political gossip occurred in *circuli* and at *convivia*.<sup>795</sup> *Convivia* are a natural setting for gossip about current affairs, and freedom of speech at dinner parties was discussed in chapter 2. It is less clear whether Tiberius was considering gossip solely among the elite, or if *convivia* should be interpreted more widely. *Collegia* held formal banquets, and it would be surprising if politics was not discussed there.<sup>796</sup> The precise nature of *circuli* is even more obscure. Boissier’s suggestion that groups regularly gathered to gossip on street corners, encouraged by the *beaux climats* of the

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<sup>793</sup> Tac. *Ann.* 4.11.3. Cass. Dio 53.19 expresses similar sentiments about the effect of imperial secrecy, gossip and rumour on the way events were reported after 27 BC.

<sup>794</sup> E.g. Plin. *Ep.* 1.17, 2.1, 2.14, 3.9, 3.20, 4.25, 5.9, 5.13, 6.22, 8.18 all refer to events in the senate or political matters at Rome, often drawing a moral about the occasion.

<sup>795</sup> Tac. *Ann.* 3.54.1 on proposed sumptuary laws. *convivia et circuli* are also linked in Livy 44.22.8. O’Neill 2003: 147-57 discusses association between *convivia*, *circuli* and *contiones* but in the context of the Republican period. He distinguishes *convivia* occurring in private space from *circuli* meeting in public spaces.

<sup>796</sup> Toner 2009: 107-8, Horsfall 2003: 35 for speculation about *collegia* banquets, discussed further below.

Mediterranean, is a sensible one which other scholars have followed.<sup>797</sup> It may even suggest informal meetings of *collegia* where people gathered outside.

O'Neill reviews evidence for *circuli* at Rome and amongst the military and suggests that large, informal gatherings were frequent.<sup>798</sup> O'Neill argues that the authorities saw these as a focus of political protest, because fortune tellers and astrologers, along with other entertainers, found an audience there. His implication is that gossip in *circuli* gave rise to threats against the emperor, and caused demonstrations. However, the evidence suggests that *circulus* was something of a catch-all term, as the word is used for any informal group where news was exchanged.<sup>799</sup> *Circulatores* may simply have seen a business opportunity to entertain the crowd. That does not necessarily equate to deliberate political manipulation and O'Neill himself acknowledges the difficulty in drawing conclusions from the available evidence.<sup>800</sup>

Tacitus describes people talking in *circuli* after the death of Agricola:

vulgus quoque et hic aliud agens populus et ventitavere ad domum  
et per fora et circulos locuti sunt.

The people and this busy population came repeatedly to his house,  
and talked of him in public places and in private circles.<sup>801</sup>

O'Neill believes this indicates the political nature of *circuli* but Tacitus' point is rather that people were so concerned for Agricola that they talked about him

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<sup>797</sup> Boissier 1875: 69-78, though his view of Rome as equivalent to the café-culture of seventeenth-century Paris is now outdated.

<sup>798</sup> O'Neill 2003. The bulk of this article deals with Republican politics and does not reflect the changed political climate of the first century AD.

<sup>799</sup> Lewis and Short note its use in the sense "circle or company for social intercourse" is "very frequent" with 16 occurrences quoted from Cicero to Pliny.

<sup>800</sup> O'Neill 2003: 138-9, 145, 151-7. Yavetz 1969: 1-2, 3-7 discusses the difficulty of relying on elite sources for information about the plebs and elite prejudices, 134 speculates whether expelling astrologers from Rome was intended to quell rumours but even if that is correct, it does not necessarily mean that these rumours were spread in the *circulus* in particular. Nippel 1995: 27-30.

<sup>801</sup> Tac. *Agr.* 43.1. O'Neill 145-6.

wherever they met, in the forum or informally in groups. It would be extraordinary if casual conversations did not touch on politics, probably frequently becoming heated, but that is not the same as gatherings specifically designated for political purposes. Those were seen as a threat and controlled, as when Claudius closed clubs and prohibited gatherings in taverns, or Trajan refused Pliny permission to set up a *collegium* of firemen at Nicomedia because of factional disturbances.<sup>802</sup> The gossip about Agricola may have its origins among the elite, but it is intended as a compliment to his reputation that it spreads among the *vulgus* as well. It also illustrates that elite and plebeians shared common concerns. The same topics interest all levels of society. A further method for dissemination of gossip may have been through *subrostrani* – idlers who hung about the forum and gossiped about the courts and senate.<sup>803</sup> It is not clear if these men had some kind of status as purveyors of informed gossip about political events, or if they were bystanders who liked to know what was going on and spread the news.<sup>804</sup> At present, there is not enough evidence to decide.

Some modern scholars suggest that the mob was generally apathetic and apolitical, others that demonstrations were frequent and potentially destabilising.<sup>805</sup> However, as Yavetz observes, emperors rarely needed to use force to suppress popular unrest. He quotes examples of Tiberius ordering the suppression of a riot at the funeral of Pollentia, Gaius sending troops against the crowd in the Circus, and Claudius' rescue from a mob in the forum.<sup>806</sup> Yavetz contends that fear of military force was, in normal circumstances, enough to

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<sup>802</sup> Cass. Dio 60.6.6-7, the first measure specifically against Jews, the rest general; Plin. *Ep.* 10.34.

<sup>803</sup> Laurence 1994: 63.

<sup>804</sup> Pina Polo 2010: 77-9 discusses *subrostrani* in the Republic and dismisses them as inquisitive, manipulative but insignificant.

<sup>805</sup> E.g. Griffin 1991 thinks that the plebs posed little serious threat, as does Nippel 1995: 85 who argues that riots and demonstrations over the wheat ration did not necessarily have wider political implications. Yavetz 1969: 33-6 argues that the mob were concerned with the wheat ration and pragmatic issues but also had a basic moral sense; 105 that they supported the principate but sometimes wanted a better *princeps*. O'Neill 2003 argues for politically motivated protest.

<sup>806</sup> Yavetz 1969: 10-11; Tac. *Ann.* 1.77, 12.43; Cass. Dio 59.28.10; Suet. *Claud.* 18.

discourage popular violence. The elite sources present demonstrations as the responses of a politically naïve, impulsive mob, but it may rather be that where violence does occur, it signals that the plebs have a particular investment. They felt especially strongly about events that touched directly on the unfair treatment of a member of the imperial household. According to Tacitus, “the whole nation” was fascinated by the death of Germanicus.<sup>807</sup> Tiberius, agreeing to act as judge in Piso’s trial for poisoning Germanicus, is aware that the normal popular interest in imperial words and actions is intensified. Gossip has created its own political agenda –not only the emperor’s reputation is at risk, but wider political institutions. The people mobbed the senate-doors, shouting that if Piso escaped judgement there they would see to it themselves. His statues were dragged to the Gemonian Stairs, and broken. This was too much for Tiberius, who ordered them to be rescued and replaced and sent Piso home with a military escort. There are other examples – the death of Tiberius saw mobs running around shouting “Tiberius to the Tiber” and Gaius’ accession was greeted by demonstrations of support.<sup>808</sup> The reaction to Nero’s divorce of Octavia showed how rapidly rumour and counter-rumour could lead to mob violence.<sup>809</sup> A false rumour that Nero had restored her led to such hysterical demonstrations that the military had to restore order. The demonstrations against the execution of the slaves of Pedanius Secundus in AD 61, similarly, show intense feeling among the plebs on behalf of the condemned slaves.<sup>810</sup> Yavetz argues that they are motivated by moral concerns, and occasions where they approve imperial *clementia* reflects their innate sense of justice.<sup>811</sup> Elite concerns are understandable – as the frantic demands for the death of Tigellinus or Otho show, these protesters could swiftly

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<sup>807</sup> Tac. *Ann.* 3.11.2 omnes civitas. Yavetz 1969: 13, 31-2 suggests a “general strike” in the aftermath of Germanicus’ death and discusses the enduring popularity of his family with the plebs.

<sup>808</sup> Suet. *Tib.* 75.1; *Calig.* 13.

<sup>809</sup> Tac. *Ann.* 14.59-64.

<sup>810</sup> Tac. *Ann.* 14.42-5.

<sup>811</sup> Yavetz 1969: 31-6.



become violent and dangerous mobs.<sup>812</sup> However, that does not mean that the plebs were unreasonable in agitating for what they thought was right and violence was not an automatic result. The evidence suggests that the plebs were genuinely concerned for members of the imperial family, feeling a connection with the imperial court, perhaps not entirely dissimilar to the current popular interest in the royal family.<sup>813</sup> When the plebs' demands for the recall of Julia annoyed Augustus, he addressed an assembly of the people. He refused to do as they wished, calling on the gods to curse them with like daughters and wives.<sup>814</sup> Dio adds:

τοῦ δὲ δήμου σφόδρα ἐγκειμένου τῷ Αὐγούστῳ ἵνα καταγάγῃ τὴν θυγατέρα αὐτοῦ, θᾶσσον ἔφη πῦρ ὕδατι μιχθήσεσθαι ἢ ἐκείνην καταχθήσεσθαι. καὶ ὁ δῆμος πυρὰ ἐς τὸν Τίβεριν πολλὰ ἐνέβαλε: καὶ τότε μὲν οὐδὲν ἤνυσεν, ὕστερον δὲ ἐξεβιάσατο ὥστε ἐς γοῦν τὴν ἡπειρον αὐτὴν ἐκ τῆς νήσου κομισθῆναι.

The people urged Augustus very strongly to restore his daughter from exile, but he answered that fire should sooner mix with water than she should be restored. And the people threw many firebrands into the Tiber; and though at the time they accomplished nothing, yet later on they brought such pressure to bear that she was at least brought from the island to the mainland.<sup>815</sup>

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<sup>812</sup> Tac. *Hist.* 1.32 for Otho, 1.72 for Tigellinus.

<sup>813</sup> E.g. a google search for "Duchess of Cambridge" on 20/6/12 found 43,800 results, of which all on the first page mentioned fashion and three referred to Lupo the dog. E.g. from the Daily Mirror <http://www.mirror.co.uk/news/uk-news/kate-middleton-dresses-in-mcqueen-for-garter-894866> and the Daily Telegraph <http://www.telegraph.co.uk/news/uknews/kate-middleton/9337502/Duchess-of-Cambridge-joins-camping-trip-in-the-woods.html> suggesting that the story is expected to appeal across class and political boundaries.

<sup>814</sup> Suet. *Aug.* 65.2-4.

<sup>815</sup> Cass. Dio 55.13.1.

This suggests great strength of feeling, but it is possible that it should be taken in the same spirit as repartee at shows or political lampoons, so that though humour is acerbic, it still informs the exchange. That it was considered expedient to make a concession may be a rare example of an emperor's response to political gossip.

Tacitus provides a hint that low-level agitation was safer and more usual than open confrontation:

comitante opinione [Agricola] Britanniam ei provinciam dari,  
nullis in hoc suis sermonibus, sed quia par videbatur. haud semper  
errat fama; aliquando et eligit.

There accompanied [Agricola's] recall the rumour that Britain was in store for him as his province, not that his conversation was ever directed to this goal, but simply because he was judged competent. Rumour is not always wrong; sometimes it even chooses the winner.<sup>816</sup>

Rumour is a normal accompaniment of a man in Agricola's position, so it is a mark of Agricola's merit that he makes no attempt to influence it. This implies that he could have done so, and that an emperor's decision in turn might be influenced by "the word on the street". Toner suggests that the plebs used gossip as a way of manipulating responses to get what they wanted: "trying to create a moral imperative for the elite to help by gossiping, moaning and generally making it clear that public opinion was against the rulers."<sup>817</sup> In this interpretation, gossiping becomes a "strategy" to try and force a desired outcome.

That raises the question of how far gossip was a matter of people expressing opinions, informed or otherwise, and how far there was manipulation by people seeking their own advantage. As Paine observes: "Sometimes a good gossip

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<sup>816</sup> Tac. *Agr.* 9.

<sup>817</sup> Toner 2009: 33-6. Similarly Scott 1990: 154-6 on grumbling as thinly disguised dissent.

plans on certain of his ‘confidences’ being passed on.”<sup>818</sup> Laurence takes a top-down approach, suggesting that patrons could prime their clients with particular information. He acknowledges problems with accuracy as information spreads out from its originator, observing that as people add their own surmises and opinions, information changes.<sup>819</sup> So, for example, reports of Gaius’ death were followed by a counter-rumour that they were a test of people’s loyalty to the regime, surely the result of fevered speculation as the story spread.<sup>820</sup> There are frequent references to uncontrollable rumour-mongering, as for example when Galba adopted Calpurnius Piso, and attempts to suppress the news only encouraged its spread.<sup>821</sup> This is a salutary reminder that influencing gossip was not necessarily easy. Trying to manipulate a mob is not the same as using gossip as a weapon in the closed world of dynastic intrigue. That may have been no less dangerous but it was more easily controlled and worked through known participants whose reactions could be anticipated.

This is why the best evidence for gossip to manipulate people’s response is not among the plebs, but as part of power struggles within the imperial household. The relatively small size of elite society and the importance of personal relationships in brokering power meant that gossip played a key part in court life. Anecdotes about imperial habits that make their way into the historical sources may well have their roots in gossip about imperial preferences and interests. The intense interest in the emperor and his doings is more than the “celebrity culture” that dominates the modern media. When Tacitus alleges that Sejanus used gossip to discredit Agrippina, he reveals a palace culture where gossip is rife, used for

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<sup>818</sup> Paine 1967. While a modern anthropological study, Paine’s model of the individual within his community is helpful for considering the role of gossip in early imperial Rome.

<sup>819</sup> Laurence 1994 argues for a network of information, controlled by patrons who used clients as sounding boards for wider opinion, but his evidence is for the Republican period and he acknowledges the different political climate of imperial Rome. He suggests that by the time it has passed through four iterations, news became only 40% reliable, though it is not clear from where that figure originates.

<sup>820</sup> Suet. *Calig.* 60.

<sup>821</sup> Tac. *Hist.* 1.17.

political ends, and highly dangerous.<sup>822</sup> The accuracy of rumours from eighty years previously may be doubtful, but such accounts show the level of malice that was considered credible. This was a unique social environment, and one that operated by its own rules.<sup>823</sup>

The exile of the elder and younger Julia, the downfall of Agrippa Postumus and Messalina, and the death of the younger Agrippina all occurred against a background of constant gossip and rumour.<sup>824</sup> The detail is not recoverable, though the hostile accounts that the sources retain probably owe their origin to rumour and show how vicious the world of the court became – alleging that the Julias and Messalina were sex-mad adulterers, Agrippa Postumus a crazed brute, and Agrippina tried to retain power through incest. This is damaging beyond its immediate victims, because it creates a climate of irrationality and confusion which makes it hard to distinguish truth from falsehood. Writing about the senate, Pliny perceives that gossip and rumour obstruct genuine expressions of opinion; they veer from one conclusion to another. Actions are judged not by merit or intention, but by outcome:

tales ubique sermones, qui tamen alterutram in partem ex eventu  
praevallebunt. est omnino iniquum, sed usu receptum, quod  
honestas consilia vel turpia, prout male aut prospere cedunt, ita vel  
probandur vel reprehenduntur. inde plerumque eadem facta modo  
diligentiae modo vanitatis, modo libertatis modo furoris nomen  
accipiunt.

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<sup>822</sup> Tac. *Ann.* 4.12, 54. Suet. *Tib.* 53.

<sup>823</sup> Gluckman 1963: 312-13 argues that gossip has its own rules and is self-limiting but his study is based on a small Welsh village in the 1960s. This does not provide a good analogy with imperial circles during the early principate. Here there was no possibility of the factions unifying and the aim was personal gain at the victim's expense.

<sup>824</sup> For the elder and younger Julia and Agrippa Postumus see e.g. Cass. Dio 55.10.11-16; Tac. *Ann.* 1.53, 3.24; Suet. *Aug.* 19, 65. For Messalina see e.g. Suet. *Claud.* 29, 36-7; Tac. *Ann.* 11.1-2, 12, 26-38. Younger Agrippina e.g. Cass. Dio 61.10.1-2, Suet. *Ner.* 34; Tac. *Ann.* 14.1-13. For modern discussion on the disgrace and exile of the elder Julia see Fantham 2006: 79-82, 108-11 for the younger Julia, 106-7 for Agrippa Postumus. Levick 1999: 58-63, 150-2 on the younger Julia and Agrippa Postumus, Levick 1990: 55-67 for Messalina.

That is how people are talking everywhere, and there will be no majority for one side or the other till it is known how the matter will end. It is very deplorable, but it is the accepted rule that good or bad counsels are approved or condemned according to whether they turn out well or badly. The result is that we find the self-same deed ascribed sometimes to zeal, sometimes to vanity, and even to love of liberty and downright madness.<sup>825</sup>

Manipulating facts for self-advantage is paramount. As a result, it is not clear what information is dependable and what is presented for the speaker's own ends. This is a looking-glass world where nothing is expressed with genuine conviction and everything becomes unreliable. This is a peculiar form of control, but none the less, it inhibits open speech in court circles.

Informal communication operated on different levels in early imperial Rome. It seems to have been a normal element in political life, encouraged by the paucity of channels for official news. Gossip could be exploited to influence opinion, and moved across social boundaries. The plebs were not passive recipients of gossip, but had their own opinions. On occasion, they held these forcefully enough to lead to demonstrations in an effort to impose their views. Unsurprisingly, the crowd at these demonstrations was volatile, often becoming violent, and so was not tolerated by the imperial authorities because of the threat to public order.

#### **5.4 Graffiti, *dipinti* and *libelli***

This section is concerned with informal writing on political topics, rather than literature composed for recitation and publication. This informal writing was originally created as graffiti, *dipinti* and *libelli*, but surviving examples are mostly preserved in Suetonius, Dio, Tacitus, and Plutarch. This creates an

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<sup>825</sup> Plin. *Ep.* 5.9.7.

immediate tension, because these authors write for the elite and their reasons for including examples of graffiti are literary ones. For example, Suetonius tells us:

statuae eius a vertice cirrus appositus est cum inscriptione Graeca;  
nunc demum agona esse, et traderet tandem. alterius collo ὄσκῳ  
praeligatus simulque titulus: “ego egi quod potui. sed tu cullum  
meruisti.” ascriptum et columnis, etiam Gallos eum cantando  
excitasse.

A curl was placed on the head of [Nero’s] statue with the  
inscription in Greek: “Now there is a real contest and you must at  
last surrender.” To the neck of another statue a sack was tied and  
with it the words: “I have done what I could, but you have earned  
the sack.” People wrote on the columns that he had stirred up even  
the Gauls by his singing.<sup>826</sup>

This preserves witty criticism of Nero and adds interest and variety by representing the voice of the “man on the street”. However, because it is mediated through Suetonius’ wider literary concerns, it needs treating with caution. As Zadorojnyi notes, there is a lack of precision in the sources, so that they conflate written lampoons with those that circulated orally, and even include symbols such as covering Agrippina’s statue, in a generalised category of “protest”.<sup>827</sup> He concludes: “Graffiti, pamphlets, oral couplets and non-verbal signs coalesce into a language of mockery and antipathy that harks back to but exceeds the licence of ritual abuse.”<sup>828</sup> Zadorojnyi’s suggestion that the sources are not interested in distinguishing form over content when they discuss informal written protest is surely correct. The idea that this was intrinsically an elite form of protest, or “excessively” abusive bears further exploration.

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<sup>826</sup> Suet. *Ner.* 45.2.

<sup>827</sup> Zadorojnyi 2011: 221-3.

<sup>828</sup> Zadorojnyi 2011: 223.

Writing on walls was not necessarily a subversive action in the ancient world. Studies of graffiti inside houses at Pompeii show that this was a way of exchanging greetings.<sup>829</sup> On external walls, notices range from announcements to advertisements, from election slogans, to toilet humour and boasts of sexual conquests.<sup>830</sup> It seems reasonable to assume that this was the same elsewhere, but that the ephemeral nature of the evidence means it has not survived. Graffiti are sometimes found relating to one another, as at Pompeii, giving a glimpse of the writers behind the words. Academic theories consider the significance of creating *dipinti* and graffiti as an act of “writtenness” (*sic*).<sup>831</sup> This can become complicated and inward looking, and it needs to be remembered that this is an alien culture and language. For example, Mary Beard discusses the graffito “*Cucuta a rationibus Neronis*”, sometimes translated as “Cucuta, Nero’s accountant” and used to prove Nero and Poppaea visited Pompeii.<sup>832</sup> She offers the alternative translation, “Poison is Nero’s accountant”, suggesting that this is a joke which has been misunderstood. This exemplifies the need for caution, and perhaps also common sense. We cannot, of course, ever know for certain, but whoever scribbled about Nero using poison to settle his “accounts” is unlikely to have been plotting revolution.

Mouritsen suggests that the election slogans which survive at Pompeii were not spontaneous political expressions. They were organised by the candidates and posted by professional painters, using a conventional script.<sup>833</sup> Other examples show that the standard form of words could be parodied. “The little thieves ask for Vatia as aedile” was surely not officially endorsed by the candidate.<sup>834</sup> Vatia, in fact, also receives support from “the late drinkers”, and “all those asleep and

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<sup>829</sup> Franklin 1991; Zadorojnyi 2011; Benefiel 2011. Rather like leaving a note on the fridge door nowadays.

<sup>830</sup> Baird and Taylor 2011; Harris 1989: 200-1.

<sup>831</sup> E.g. Keegan 2011. Zadorojnyi 2011. Milnor 2009: 291-4.

<sup>832</sup> Beard 2008: 49-51.

<sup>833</sup> Mouritsen 1988.

<sup>834</sup> Cooley and Cooley 2004: 114-123 on standard forms for election notices and selected examples in English. *Varia CIL* IV 575.

Macerius”.<sup>835</sup> Other candidates have the allegiance of “all the run-away slaves” and “dice throwers”.<sup>836</sup> These mock election slogans are funny, and humour and playfulness are not restricted to “political” graffiti. When we find a scrawl on a wall which says “Lovers, like bees, lead a honeyed life” and, in different hand writing, “I wish”, it may not be helpful to over analyse the joke.<sup>837</sup> A number of walls at Pompeii have inscriptions similar to one found in the Large Theatre – “I admire you, wall, for not having collapsed at having to carry the tedious scribbles of so many writers.”<sup>838</sup> Playfulness can be visual, since there are examples of word squares which can be read in all directions:

R O M A

O L I M

M I L O

A M O R<sup>839</sup>

There is a Minotaur in a Labyrinth and a snake-shaped graffito commending Sepumius’ success in the “snake game”.<sup>840</sup> A parody of Virgil’s *Aeneid* on the house of the fuller Marcus Fabius Ulutremulus is a complicated joke. It puns on his name, and traditions about fullers, but it also exploits the painting on the façade of the house, showing Aeneas carrying Anchises.<sup>841</sup> Milnor points out that a quote from the *Aeneid* is posted against a notice supporting Gaius Cuspius Pansa, so that it plays on the letters DIDO from the formulaic D.I.D.O.V.F (*duumvirum iure dicundo oro vos faciatis* – I ask that you make so-and-so

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<sup>835</sup> *CIL* IV 576, 581.

<sup>836</sup> *CIL* IV 7389, 3435.

<sup>837</sup> *CIL* IV 8408 amantes, ut apes, vita(m) mellita(m) exigent. velle.

<sup>838</sup> *CIL* IV 1904, admirer o pariens te non cecidisse ruinis qui tot scriptorium taedia sustineas, also 2461, 2487. Cooley and Cooley 2004: 79.

<sup>839</sup> *CIL* IV 8297, also 8623 ROTAS/OPERA/TENET/AREPO/SATOR. Cooley and Cooley 2004: 76 think that this is not a Christian example although later this word square was used as Christian symbolism as it could be rearranged to form PATERNOSTER twice, A and Ω.

<sup>840</sup> *CIL* IV 2331, 1595.

<sup>841</sup> *CIL* IV 9131 (fullones ululamque cano, non arma virumque). Beard 2008: 50-1. Milnor 2009: 299-301.



duumvir for supporting the law).<sup>842</sup> The evidence from Pompeii suggests that making use of visual cues was a normal element in informal writing. It parallels the examples found in Suetonius, where statues, sacks and curls are used to make political jokes about Nero, but raises the question of how exceptional and indeed how abusive this should be considered. Exploiting visual opportunities for humour appears to be a normal element in informal writing.

Some modern scholars have suggested there was widespread illiteracy among the urban poor and rural slaves. For example, Harris argues that “there was no mass literacy” in the Roman world.<sup>843</sup> This view has been challenged, and Horsfall argues for more widespread “functional” literacy, as required by an army clerk or small businessman.<sup>844</sup> Harris is surely correct to assert that considerable erudition was required to compose and comprehend Roman literature, and that this kind of education required resources in terms of materials, tutors and leisure for study. However, it is not clear that the same is true of graffiti – political or otherwise. Fragments of a painted frieze from the house of Julia Felix show scenes from the forum. They have been restored and the original order is not preserved, but they do give a lively impression of forum life – bargaining at market stalls, dealing with recalcitrant toddlers and mules, a school boy beaten while the rest of his class look busy.<sup>845</sup> One scene shows a group standing in front of a noticeboard fixed horizontally across the base of a portico in front of three equestrian statues:

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<sup>842</sup> Milnor 2009: 295-7.

<sup>843</sup> Harris 1989: 3-24. For a definition of literacy, Johnson and Parker 2009: 3 n. 5 where UNESCO’s statement of an illiterate as “someone who cannot with understanding both read and write a short simple statement on his everyday life” is set against wider sociological definitions about processes of communication.

<sup>844</sup> Horsfall 1991. Humphrey et al 1991 offer a response to Harris 1989.

<sup>845</sup> Nappo 1989 has plates of the whole frieze and a detailed commentary on the scenes. Beard 2008: 72-8 observes the combination of scenes and presence of a cart in daylight and concludes: “This is not daily life but an imaginative recreation of it.” For our purposes, it represents the painter’s view of an ordinary incident in forum life.

<sup>846</sup> Image from <http://pompeiiinpictures.org/R2/2%2004%2003%20p2.htm>, academic use in compliance with the copyright terms.



**Forum Scene from the house of Julia Felix, Pompeii.**

Museo Archeologico Nazionale di Napoli, 9068.

Four men are reading the notices – a man and a child together and two other men standing a little apart. What is remarkable about this is its ordinariness. The painter has depicted people pausing to read notices as they go about their business in the forum, and while it is not possible to draw firm conclusions, it does suggest that people routinely came to the forum and read official notices. While they were there, they could also read graffiti and *dipinti* on columns and statues.

It is sometimes suggested that the literate would read aloud to others, and this scene has been used as an example.<sup>847</sup> This shows the difficulty in interpretation, but all four figures are looking at the notices, not at one of the others, as would be natural if someone was reading to them. The evidence is not conclusive but it does suggest that the men are reading for themselves. It is also worth noting that most graffiti and *dipinti* are short and simple, in form if not content, and so easily read even by someone whose literacy is limited. Woolf discusses the need for practical literacy in the Roman world, where documents were routinely used, but many of the texts encountered in daily life were short and formulaic.<sup>848</sup> He makes a comparison with computer literacy today, where most people can use technology without necessarily fully understanding it or exploiting all its functions. His idea of “specialized literacy” whereby someone could understand abbreviations and codes – such as labels on amphorae – without necessarily being able to read a literary text is helpful, since it postulates a wide audience for graffiti. More pragmatically, graffiti are worth taking the trouble to decipher, because the reader knows they will probably be funny or scurrilous.<sup>849</sup> Once read, they are memorable, and as discussed in chapter 2, a witty verse is easily

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<sup>847</sup> Woolf 1996:881 suggests that it “may show a literate reading out notices to a crowd of less literate bystanders”.

<sup>848</sup> Woolf 2009. A further comparison could be made with projects set up to teach women in the third world to read so that they can access basic information, such as labelling on medicine, for example RUWON Nepal <http://www.ruwonnepal.org.np/>.

<sup>849</sup> Bowman and Woolf 2009: 2-3 point out that literacy is “not a single phenomenon but a highly variable package of skills in using texts” and individuals may be competent in “particular registers of language”.

repeated. Lampoons scribbled in the forum and read by passers-by could easily have a wide circulation around Rome. Conversation in *popinae* or at *collegia* dinners might reasonably include “a funny thing read on the way to the forum”.

The apparently sophisticated content of informal writing raises further questions about its authorship and audience. For example, graffiti appeared on Domitian’s plethora of triumphal arches (*arci*) saying, in Greek, “it is enough” (ἀρκει).<sup>850</sup> Anonymous lampoons appeared about Tiberius’ bloodthirsty nature, and Drusus’ birth three months after Livia’s marriage, while references to Greek myths were used to insult Nero.<sup>851</sup> Horsfall argues that attendance at the theatre, and perhaps story telling by *circulatores*, meant that these allusions would be widely recognised.<sup>852</sup> Milnor notes that at Pompeii, the quotes from canonical poets tend to be limited to opening lines or frequently repeated phrases, while references to prose are rare.<sup>853</sup> This suggests that the references in graffiti are popular commonplaces which would be generally appreciated, and if necessary could be explained to those who failed to get the joke. These jokes have much in common with the repartee described at shows, since some is appreciative, some is not, but all of it is funny.<sup>854</sup> The literary sources preserve only political examples, and probably the most memorable and daring ones at that. Evidence from graffiti found at Pompeii suggests that these should be seen in a wider context, where political topics are only one element in people’s humour. Just as at the theatre, a political target may simply have given the joke an edge without real malice behind it, or subversive intention. Exceptions occur in exceptional circumstances, as for example after the death of Germanicus, when there was an outbreak of graffiti saying “Give back Germanicus!” This was posted at night and was not

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<sup>850</sup> Suet. *Dom.* 13.2.

<sup>851</sup> Suet. *Tib.* 59, with similar verses implied at *Claud.* 1.1, *Ner.* 45.

<sup>852</sup> Horsfall 2003: 58-60; 12-13 on Ov. *Fast.* 3.523-542 where the plebs have a mass picnic on the Campus Martius for the festival of Anna Perenna and sing songs learned in the theatres.

<sup>853</sup> Milnor 2009: 299. Beard 2008: 284 draws a parallel with famous lines of Shakespeare, where someone can quote “to be or not to be” without “close acquaintance” with the text.

<sup>854</sup> E.g. *CIL* IV 3525, 3726, 1074. Cooley and Cooley 2004: 64 on graffiti hailing “judgements” of Nero and Poppaea, perhaps over honorific grants of colonial status.

limited to inscriptions, as the words were shouted aloud. When Nero's reign was in terminal decline, not only was there an outbreak of graffiti, but also people pretended they were arguing with slaves and kept shouting out for a "defender".<sup>855</sup> Apart from any cynicism we may feel about the pun on Vindex's name – surely a rather literary kind of a joke – the point is that these occasions represent an abnormal situation when "populist" graffiti leads to popular protests. They are a symptom rather than a cause of wider turmoil. The only references to "bulletins" being used to stir mass protest are in AD 6 when Rufus' name was used and in AD 24 when Titus Curtisius posted manifestos (*libelli*) to encourage a slave revolt near Brundisium.<sup>856</sup> Although an argument from silence needs to be treated carefully, it does seem that this was unusual.

The evidence suggests that there was often a marked lack of official reaction to graffiti and pamphleteering. In this sense, they can reasonably be described as a form of "licensed abuse".<sup>857</sup> For example, Suetonius records that:

mirum et vel praecipue notabile inter haec fuerit nihil eum  
patientius quam maledicta et convicia hominum tulisse, neque in  
ullos leniorem quam qui se dictis aut carminibus lacesissent  
exstitisse. multa Graece Latineque proscripta aut vulgata sunt

It is surprising and of special note that all this time [Nero] bore  
nothing with more patience than the curses and abuse of the  
people, and was particularly lenient towards those who assailed

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<sup>855</sup> Suet. *Ner.* 45.2. This fits well with Scott 1990: 151-4, discussing subordinates using "veiled remarks" as a form of protest against those in power.

<sup>856</sup> Cass. Dio 55.27.1-3; Tac. *Ann.* 4.27. I have not discovered any discussion of what such *libelli* or βιβλία were made from; papyrus was expensive and wooden tablets cannot have been easy to "scatter" as Suet. *Aug* 55 says was done in the senate house. Bowman 1991 notes that the Vindolanda tablets, written on thin wooden leaves, represent a cheap and readily available form of writing material used in the Roman world, which has rarely survived, so perhaps this was used for these anonymous *libelli*.

<sup>857</sup> Zadorojnyi 2011: 223.

him with gibes and lampoons. Of these many were posted or circulated both in Greek and Latin.<sup>858</sup>

Suetonius assumes that lampoons were posted (*proscripta sunt*) and then circulated (*vulgata sunt*) as a matter of course. Nero's refusal to allow informers to name the anonymous composers may be a pragmatic response when there was little real threat. They were difficult to police, especially if they were posted anonymously, routinely, and by night.<sup>859</sup> As to where they were circulated, Toner speculates that despite elite prejudices, *collegia* were essentially a way of copying elite society through organised, hierarchical associations.<sup>860</sup> It may therefore not be a major leap to speculate that satirical verses formed part of the routine entertainment at *collegia* dinners.<sup>861</sup> Horsfall suggests that these could be "sometimes contemporary, political, topical and irreverent, if not grossly abusive".<sup>862</sup> This is an attractive suggestion, as evidence for topical, abusive verses at elite dinners is definite. It is less clear that repeating these lampoons risked inciting political unrest, any more than a modern comedian telling acerbic jokes would do today.

In contrast, the occasions when the emperor was moved to act against *libelli* are when they threatened unrest. In chapter 1, it was shown that the *lex Cornelia de iniuriis* was almost certainly extended by *senatus consulta* to include cases of anonymous and pseudonymous defamation during the early principate.<sup>863</sup> Some pamphleteering was suppressed, with copies actively sought out and destroyed and authors punished.<sup>864</sup> This suggests that they should be distinguished from the

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<sup>858</sup> Suet. *Ner.* 39 1-2. For Augustus' tolerance, e.g. Suet. *Aug.* 55.

<sup>859</sup> E.g. *CIL* IV 7621 lanternari tene scalam. "Lantern carrier, hold the ladder!" Zadorojnyi 2011: 125.

<sup>860</sup> Toner 2009: 107-8. Lendon 1997: 95-100 discusses hierarchies and honour among the non-elite and notes the tendency to imitate elite customs in burial clubs and *collegia*.

<sup>861</sup> Horsfall 2003: 31-47 on the importance of music and song in plebeian culture, 35 speculating about *collegia* banquets.

<sup>862</sup> Horsfall 2003: 37.

<sup>863</sup> Discussed in chapter 1.4.

<sup>864</sup> Suet. *Aug.* 19.1, 51.1, 55; Cass. Dio 55.27.1-3, 56.27.1; Tac. *Ann.* 5.4.4.

type of lampooning discussed above, presumably because they because they involved the elite and so posed a political threat which had to be contained.

## 5.5 Conclusion

The evidence suggests that interaction between the widest sections of society took place at shows. This was a two-way process, because the emperor used the opportunity to make his own political points and to gain popular favour. The crowd, in turn, made demands of the emperor. On occasion, these could become embarrassing, even angry or violent. There seems to have been an element of manipulation in audience response, since clagues were formed to encourage applause and there is evidence of fighting between factions. Support for actors, gladiators or Circus factions could also lead to demonstrations, even riots.

The evidence suggests that astute, witty topical references were enjoyed as a normal aspect of the entertainment. This is why responding to allusion should be seen in context of an acceptable and expected part of the performance, where risqué or barbed repartee adds to the excitement of the occasion. This conclusion is strengthened by the reluctance to impose controls at shows themselves. The increase in the number of venues and performances during the first century reinforces the idea that shows were not considered a threat. Almost always, attempts at suppression are centred on controlling the performers, not the performances themselves.

The surviving evidence about gossip mainly describes it as a force in the dynastic and political faction which interests elite sources. However, there is also evidence that gossip about political matters, especially with regard to food prices and public security, affected the urban plebs. It is not clear if popular demonstrations were fuelled by rumour-mongering, deliberately started for political purposes, or were spontaneous. However, to demonstrate at all, individuals had to be engaged at a personal level and feel strongly enough to risk imperial anger. This need not escalate to violence, as the stand off with Augustus over Julia's exile shows. In fact, the emperor's ability to quell demonstrations

with military force was enough to restrain all but the most ardent protests and seems to explain why demonstrations happened relatively rarely.

There are plenty of examples of informal written protest, but the elite sources are far more interested in describing content over form and so they conflate accounts of graffiti, *dipinti* and *libelli*. They record them collectively, in order to entertain their audience through witty criticisms of the emperor. The emperor himself seems to have had a much clearer awareness of what constituted a hazard. Informal writing was part of the fabric of normal life, and political jokes were only one element of popular humour. It was best left alone, since suppression was difficult and even counter-productive. Pamphlets, often pseudonymous or anonymous, which originated from and circulated among the elite threatened wider unrest. These were not tolerated.

A wide section of society made their voices heard in protests at theatres, amphitheatres and circuses, through demonstrations, gossip and graffiti. It seems that individual plebeians had a strong sense of justice and sincere concern for particular political events, though their interests were not always identical to those of the elite. They should not be seen as disengaged from politics or unwilling to express their views.



## Conclusion

Tacitus formulates the problems he claims to have encountered over freedom of speech as he searched for historical truth. He identifies them as the rise of the principate, fear, flattery and hatred and asserts that only the present, felicitous age lets him speak with real freedom, rather than the *falsa species libertatis* of the toady or coward. He demonstrates great delicacy of touch, positioning himself as someone who is able and willing to speak out and to correct what others have suppressed.<sup>865</sup>

In the course of this study, it has been shown that we need to approach such remarks – and similar statements in other early imperial writers – on their own terms. Tacitus reflects a world of complex horizontal and vertical pressures upon freedom of speech. So what he says about *libertas* and what he fails to say about the similarity between the different principates – whether he was writing about Augustus, Domitian or Trajan – are crucial to understanding contemporary experiences of freedom of speech.

That freedom of speech was controlled by the hierarchical, intensely status-conscious nature of Roman society. It was essential to demonstrate *libertas* – the free speech befitting a free man – but always with one eye on how others might respond. The reactions of a man's peers as well as his junior and senior friends needed to be considered. They would decide whether someone spoke with real freedom, or merely its false appearance. Their judgement affected the social standing of a member of the Roman elite and there was no appeal.

The pressures of deciding relative status were complicated by the emperor's position. In theory, the *princeps* shared in the same social conventions as the rest of the elite, but in practice, he held a position of supreme power. This meant that the emperor's behaviour with regard to freedom of speech varied. Each emperor

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<sup>865</sup> Tac. *Hist.* 1.1.

could behave differently both in terms of his reaction to certain individuals and at different times during the same principate. The result was that protocols for how to speak to – and about – the *princeps* were never fully defined. Practices developed from those appropriate to addressing Republican aristocrats, but it was an evolutionary process without firm rules. This explains some apparent discrepancies in the sources, and adds to the anxiety the elite experience with regard to appropriate speech. It also means that Roman elite society is subject to unique pressures, so that comparisons with other cultures need to be employed cautiously to ensure their relevance.

Understanding Roman concepts of freedom of speech is further complicated because expectations about what constituted private speech differed radically from modern ideas. An elite Roman would almost always be in the presence of an audience – family members, *amici*, clients, freedmen and slaves. As a result, all speech would normally take place in a setting which we would recognise as “public” – in other words, it was subject to evaluation, and wider circulation. “Public” matters reflected the role of the individual within his community so that the divide between political and family life does not parallel that of modern society. In fact, it fits better the model of a medieval city state where dynastic marriages, property divisions and legacies all impacted upon political life rather than being a concern for the family alone. “Privacy” was obtained only by physical withdrawal, a deliberate seclusion, and by an understanding that the conversation should not be shared. This means that there is little trace of such exchanges and evidence for them survives only where they have been overheard, or one party has broken silence.

Contemporary concern with appropriate speech in such a status-conscious society is underpinned by the knowledge that mistakes could cause lasting disgrace. The ambiguity between “social” errors and “political” prosecutions for defamation arises from the nature of Roman society. Social and political advancement are closely linked and mediated through a network of patronage. The evidence suggests that we should be wary of imposing modern expectations

of “due process” upon the law courts of the early Roman empire. Rather, they should be understood on their own terms and in their own social and political context. The emperor’s perceived wishes were therefore crucial to the course of trials in the senate, and this had far greater significance than strict legal processes. At times of political confusion, *maiestas* trials could be used either to settle personal scores or in the hope of gain. These circumstances created a situation of irrationality and fear, where freedom of speech was almost non-existent. These periods have left an understandable bitterness in the elite sources, and their impact should not be understated. None the less, the portrayal of whole principates as reigns of terror, and of all those prosecuted for *maiestas* as victims should be resisted. Some *maiestas* charges were justified, since they were brought against individuals who had acted against the emperor’s interests. The “clusters” that occur at times of particular tension reflect wider political turmoil, where factions were allowed to run out of control.

When the emperor decided not to permit *maiestas* charges, this did not mean there was a sudden change in the nature of *libertas* but an alteration in the way he was managing his relationship with the elite. If he was offended, he had recourse to other options – ignoring difficult exchanges, humour, *renuntiatio amicitiae* – and prosecution was not automatic or necessarily desirable. This also explains apparent inconsistencies and the rehabilitation of persecuted works under later principates: insult could be dismissed, sometimes as a way of demonstrating that greater *clementia* was operating in the current regime. These strategies for face-saving formulae to manage insult and avoid damage to status were shared by the elite generally: harmonious social relationships could be maintained by ignoring offensive remarks, or asking pardon while making clear that offence was misplaced.

Concern over relative status became particularly acute in circumstances where it might be challenged. Occasions where licence was allowed for insults, obscenities and humour therefore became especially fraught for the Roman elite. The difficulty was that the rules governing freedom of speech became even more

fluid at times of licence. This explains the intense anxiety around “festival occasions” and with regard to satire and light verse. There is scope for further investigation of these discrepancies and fears, especially with regard to literary culture. It would be particularly interesting to look at the material culture of Roman literature and to examine the assertion that the lack of printing press made literary control irrelevant.<sup>866</sup> This is widely assumed, but the mechanisms of censorship – or their lack – have not been explored. Further examination of literary control in early imperial Rome would usefully complement the present investigation into freedom of speech.

Freedom of speech in the senate was complicated by awareness of the emperor’s anomalous and ill-defined position. Evidence with regard to the emperor’s dealings with the senate as a body and with individual senators tends to cast earlier events negatively in order to reflect the current situation as different and preferable. This needs to be treated carefully – especially with regard to distinguishing *adulatio* from *laudatio* and where criticism of the emperor is recorded. However, if political freedom of speech is understood in terms of personal relationships between emperor and individual senators, the focus becomes clearer. An emperor was evaluated in terms of how civilly he treated the elite. When imperial tactlessness forced an acknowledgement of his greater power, the senate turned against the emperor. When the emperor dealt diplomatically with the senate, they reciprocated. In fact, tactful dealings brought their own advantage since it was bad form to show ingratitude to someone who had given a favour. That made it difficult to criticise a *civilis princeps* without that reflecting badly upon the critic’s social judgement. It seems that by the early second century, an accommodation had been reached between the *princeps* and the elite, and a mode of comfortable interaction established. This allowed the senate to maintain a semblance of freedom of speech, broadly within the conventions that allowed junior friends to address seniors.

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<sup>866</sup> See for example Kenney 1982 who is not alone in assuming that literature was produced to please the *princeps* and that this was resisted by “opposition circles”.

Conventions regarding patronage, status and others' evaluation also affected the urban plebs. Popular demonstrations arose from especially strong feeling, and were often associated with support for particular members of the imperial family. Their rare occurrence is explained because military force was used to suppress them. A wise emperor acknowledged plebeian interests, while a tactless one imposed his views by force. The urban plebs enjoyed considerable licence at shows and in posting graffiti. The impact of political humour should probably not be overstated: the elite sources preserve examples only when it suits their purposes. In fact, the evidence from Pompeii suggests that political jokes were only one aspect of popular humour. It seems they were usually tolerated as normal and unthreatening. Only when an emperor perceived a direct political danger, especially when anonymous or pseudonymous pamphlets circulated, did vigorous suppression follow. There is no question that such works were reinstated at a later date and we should understand that they were seen as a threat, possibly inciting revolution, and were dealt with on that basis.

In the course of this study, we have, in Veyne's terms, taken "a journey" into the "otherness" of a past society.<sup>867</sup> That journey, through the surviving literary sources, the preserved inscriptions and graffiti, has shown that it is necessary to be very careful about assuming that "suppression" or "censorship" operated as it is understood in the modern, western world. Even taking into account the concerns and biases of the literary narratives, it can be said with certainty that there were times which we would recognise as periods of suppression, so that speech was constrained through fear of incurring imperial displeasure. These attract historians' attention because of the drama with which they are described, but that should not obscure the fact that they are exceptional and represent a breakdown in normal relationships. Speech was always controlled among the Roman elite. In usual circumstances that operated through concern for how one's social status would be affected by the judgement of one's friends and patrons.

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<sup>867</sup> Veyne 1987: 2.

This, of course, included the emperor as ultimate patron. It was not a static position because it evolved throughout the first century AD, was subject to individual variation, and depended upon the emperor playing his part as senior partner properly. It had stabilised by the end of the period of this study. This is why the literary sources operate a kind of automatic self-censorship when contemporary freedom of speech is discussed. For example, Tacitus can say:

quod si vita suppetit, principatum divi Nervae et imperium  
Traiani, uberiolem securiolemque materiam, senectuti seposui,  
rara temporum felicitate ubi sentire quae velis et quae sentias  
dicere licet.

Yet if my life but last, I have reserved for my old age the history  
of the deified Nerva's reign and of Trajan's rule, a richer and less  
perilous subject, because of the rare good fortune of an age in  
which we may feel what we wish and may say what we feel.<sup>868</sup>

This does not mean there is unrestrained licence. It means that the protocols that govern freedom of speech are operating properly, to the advantage of both the emperor and the elite. Similarly, when Pliny tells Trajan:

iubes esse liberos: erimus

You order us to be free, and so we shall be<sup>869</sup>

this is not intended as irony, or obsequiousness, but as a statement of fact. Pliny's courtesy is impeccable. He was an elite Roman, possessing *libertas* by virtue of his free birth. That required him to speak appropriately to his inferiors, equals and superiors, as he expected that they would to him. This is why the elite sources can claim convincingly that Domitian's failure to play his part meant that *libertas* was interrupted by fear and the *res publica* harmed, and that Nerva and

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<sup>868</sup> Tac. *Hist.* 1.1.

<sup>869</sup> Plin. *Pan.* 66.4.

Trajan restored the correct balance. This may be a fragile construction, but in a world where admitting an inability to speak freely was deeply damaging to social status, it mattered. The distinction between *libertas* and *falsa species libertatis* was always a fine one. Pliny, Tacitus, Suetonius – the voices that survive to tell us what it was like to live under the early empire – express a profound conviction that *libertas* is always subject to multiple threats, but that it is once again flourishing. As members of the Roman elite, part of the complex network of Roman social and political relationships, they would struggle to express themselves otherwise. Their attitudes and experiences are not ours, but we should try, as far as we are able, to meet them on their own terms.

This study has examined differences between ancient and modern, Roman and western views of freedom of speech. It has attempted to understand this in Roman terms as a complex social and political phenomenon, profoundly affected by the hierarchical nature of their society. Yet freedom of speech is an issue that extends beyond these present concerns. Constraints on freedom of speech vary greatly with different circumstances, cultures and times, but they are a perennial human concern. Understanding differences and similarities between the ways in which societies engage with and experience control of speech is important. It assists our understanding of the sources that provide our knowledge of past events and informs our own lived experiences.

I would like to end this study by returning to our contemporary world, with an observation made a mere fifty years ago:

We will have to repent in this generation not only for the hateful words and actions of the bad people but the appalling silence of the good people.<sup>870</sup>

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<sup>870</sup> Martin Luther King, *Letter from Birmingham Jail*, 16 April 1963.

The gulf between Birmingham, Alabama in the 1960s and imperial Rome of the first century is vast, but it is not unbridgeable. Tacitus or Pliny or Suetonius would not necessarily have recognised Luther King's "good people" as *viri boni* but I think that they would have understood the central tenet of his message. Freedom of speech is not a topic for long ago and far away, but contemporary and vital. We are left with a final question about whether this journey into "otherness" took us as far from our modern world as first appeared.



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References follow the standard abbreviations found in the Oxford Classical Dictionary.

## Appendix to Chapter 1: Processes and penalties for cases touching on defamation 27 BC to AD 117

This list is not exhaustive but lists the main cases chronologically.

Date	Case and Sources	Possible charge/ legal process	Penalties and notes	Rewards for accusers
<b>Augustus</b>				
<b>BC</b> By 26	<b>C. Cornelius Gallus</b>  Cass. Dio 53.23.5-7; 24.1-4  Reports that the senate voted for conviction in the courts (an instruction to the praetor, as was done for Cn. Calpurnius Piso?)  Suet. <i>Aug.</i> 66.1-2  Servius' commentary on Virgil, <i>Eclogue</i> 10, <i>Georgic</i> 4.	Prosecution under ? <i>lex Julia de maiestate</i> in the senate following <i>renuntiatio amicitiae</i>	<i>renuntiatio amicitiae</i> by Augustus, including ban from the emperor's provinces.  Exile, confiscation of estates (given to Augustus).  Gallus committed suicide before the decree took effect.	Valerius Largus becomes influential and feared as a result of the case.



AD By 4	<b>Timagenes</b>  Sen. <i>Controv.</i> 10.5.22  Sen. <i>De Ira</i> 3.23.4-7  Barred from the emperor's house but welcomed by C. Asinius Pollio and freely received elsewhere		<i>renuntiatio amicitiae</i>  Burnt own books in protest.	N/A
6	Anonymous pamphlets – <b>Publius Rufus?</b>  Cass. Dio 55.27.1-3  Reports Rufus was not believed capable of the plot and rewards were offered for information.  Suet. <i>Aug.</i> 55.1	<i>lex Cornelia de iniuriis</i>	None recorded.	Offer of reward brings results (details not specified).
6 – 8	<b>Titus Labienus</b>  Sen. <i>Controv.</i> 10, pr.4-8  Seneca says these are the first <i>maiestas</i> charges for defamation.  Suet. <i>Calig.</i> 16.1	<i>lex Julia de maiestate</i>	Works burnt, circulation and reading banned.  Labienus committed suicide.	None recorded.

6 – 8	<b>Cassius Severus</b>  Tac. <i>Ann.</i> 1.72.2-3 and 4.21.3  The earliest example of <i>maiestas</i> charges for defamation according to Tacitus.  Sen. <i>Controv.</i> 10, pr.7-8  Jer. <i>Chron.</i> 202  Suet. <i>Calig.</i> 16.1	<i>lex Julia de maiestate</i>	Severus was banished to Crete.  Works burnt, circulation and reading banned.  In AD 24 banished to Seriphos and suffered <i>interdictio aquae et ignis</i> , property confiscated.	Possibly gained from the confiscation of the estate in 24; Tacitus does not specify.
Cass. Dio 56.27 is usually associated with Severus and Labienus but I believe this is an unnecessary conflation because a) Dio dates it to AD 12 b) Dio does not name them c) Dio refers to <i>anonymous</i> book burning. The problem here is that the names of the defendants were perfectly well known.				
8	<b>P. Ovidius Naso</b>  Ov. <i>Tr.</i> 2; 3.1	Imperial edict	<i>renuntiatio amicitiae</i>  Ovid was relegated to Tomis but retained his property.  <i>Ars Amatoria</i> (and all his works?) banned from imperial libraries.	None recorded.
?	<b>Corvus</b> (Rhetorician)  Sen. <i>Suas.</i> 2.21	<i>lex Julia de maiestate</i>	None recorded.	None recorded.

<b>Tiberius</b>				
15	<b>M. Granius Marcellus</b> Tac. <i>Ann.</i> 1.74	Tiberius refuses use of <i>lex Julia de</i> <i>maiestate</i>	Acquitted of defamation.	Acquitted of defamation.
16	<b>M. Scribonius Libo Drusus</b>  Tac. <i>Ann.</i> 2. 27-32  Cass. Dio 57.15.4-6 (very brief)  Fasti Amertini AD 16	<i>lex Julia de maiestate</i>	Libo committed suicide, supervised by soldiers.  <i>Damnatio memoriae</i> : Libo's effigy should not accompany family funeral processions and the surname Drusus not to be used by his family.  Public thanksgivings, votive offerings, anniversary of Libo's suicide to be a festival.  Astrologers and magicians were expelled from Italy and two executed.	Property divided among the accusers.  Offices granted – extraordinary praetorships for those of senatorial status.
17	<b>Appuleia Varilla</b>  Tac. <i>Ann.</i> 2.50	Tiberius refuses use of <i>lex Julia de</i> <i>maiestate</i>	Acquitted of defamation.	Acquitted of defamation.

20	<b>Cn. Calpurnius Piso</b>  Tac. <i>Ann.</i> 3.10-19  Cass. Dio 57.18.9-10 (very brief)  Suet. <i>Tib.</i> 52.3  <i>SC de Cn. Pisone Patre</i>	<i>lex Julia de maiestate</i>  (for military treason, not defamation, but the case provides valuable evidence for <i>maiestas</i> trials)	Piso committed suicide before conviction.  <i>Damnatio memoriae:</i> No women to mourn Piso's death according to ancestral custom, public and private portraits of Piso to be destroyed, Piso's image not to be displayed at funerals or in family <i>atria</i> , Piso's name to be removed from Germanicus' statue (set up by the sodales Augustales on the Campus Martius). Praenomen <i>Cnaeus</i> not to be used in the family in future. Additions to private houses made by Piso to be destroyed.  Piso's property was confiscated and a land grant by Augustus retained as imperial property. Remaining property was divided between his two sons and granddaughter.	Priesthoods for P. Vitellius, Q. Veranius, and Q. Servaeus. L. Fulcinus Trio promised imperial support, in seeking office.
21	<b>Clutorius Priscus</b>  Tac. <i>Ann.</i> 3.49-51  Cass. Dio 57.20.3-4	Highly confused. Not <i>lex Julia de maiestate</i> ?  ? <i>lex Cornelia de sicariis et venaficiis</i>	Executed.	None recorded.

23	<b>C. Cominius</b>  Suet. <i>Tib.</i> 28  Tac. <i>Ann.</i> 4.31.1	<i>lex Julia de maiestate</i>	Acquitted of defamation.	Acquitted of defamation.
23	<b>Aelius Saturninus</b>  Cass. Dio 57.22.5	<i>lex Julia de maiestate</i>	Executed.	None recorded.
24	<b>Votienus Montanus</b>  Tac. <i>Ann.</i> 4.42	<i>lex Julia de maiestate</i>	? Executed and property confiscated.  “suffered the penalties of treason”	None recorded.
?24/5 and 34	<b>Mamercus Aemilius Scaurus</b>  Sen. <i>Controv.</i> 10, pr.2-3; <i>Suas.</i> 2.21  Tac. <i>Ann.</i> 6.29.3-4  Cass. Dio 58.24.3-5  Tacitus and Dio claim Tiberius was angered by Scaurus’ play <i>Atreus</i> but this did not form part of the charges in 34.  Suet. <i>Tib.</i> 61.3 (though the poet is not named)	? <i>lex Cornelia de sicariis et venaficiis</i>  ? <i>lex Julia de adulteriis coercendis</i>  ? <i>lex Julia de maiestate</i>	Seven of Scaurus’ orations were burnt by senatorial decree, probably in 24. ? Other works burnt in 34.  Suicide (with his wife) before the verdict.	None recorded.

25	<b>A. Cremutius Cordus</b>  Tac. <i>Ann.</i> 4.34-35  Cass. Dio 57.24.2-4  Suet. <i>Tib.</i> 61.3  Sen. <i>Ad Marciam</i> 1.3  Suet. <i>Calig.</i> 16.1  Quint. <i>Inst.</i> 10.1.104	<i>lex Julia de maiestate</i>	Suicide before the verdict.  Cordus' <i>Annales</i> was burnt and aediles (at Rome) and magistrates (elsewhere) sought out private copies for destruction.  Circulation and reading of the <i>Annales</i> were banned.	None recorded.

28	<b>Titius Sabinus</b> Cass. Dio 58.1.1-3. Tac. <i>Ann.</i> 4. 68-71 Plin. <i>HN</i> 8.61 A letter from Tiberius on Capri instigated immediate condemnation.	? <i>lex Julia de maiestate</i>	? Imprisoned  Executed and body thrown down the Gemonian steps into the Tiber.  His slaves are executed (and his loyal dog perishes as well).	Ex-praetors Latinus Latianus, M. Porcius Cato, Petilius Rufus, and Marcus Opsius bring charges to gain L. Aelius Sejanus' support for seeking the consulate.
35	<b>Sextus Paconianus</b> Tac. <i>Ann.</i> 6.3.4; 6.39.1 Charges were instigated by a letter from Tiberius on Capri.	? <i>lex Julia de maiestate</i>	Strangled in prison.	Unpopularity recorded but no information about accusers/rewards.
<b>Gaius</b>				
	<b>Carrinas Secundas</b> Cass. Dio 59.20.6	? <i>lex Julia de maiestate</i>	Banished.	None recorded.
	Writer of Atellan farces Suet. <i>Calig.</i> 27.4	Unclear – imperial edict?  Possibly no pretence at due process	Executed.	None recorded.

Nero				
?	59 after Agrippina's murder	<b>Datus</b> Suet. <i>Ner.</i> 39.3	Unclear – imperial edict?	Exiled.  None recorded.
62	<b>Antistius Sossianus</b> Tac. <i>Ann.</i> 14.48-9	<i>lex Julia de maiestate</i>	Relegated (P. Clodius Thrasea Paetus persuaded the senate to vote against execution).	None recorded but Tacitus alleges Cossutianus Capito acts to curry favour with Nero.
62	<b>A. Didius Gallus Fabricius Veiento</b> Tac. <i>Ann.</i> 14.50	<i>lex Julia de maiestate</i>	Books burnt.  Relegated from Italy.	None recorded.
63	<b>Claudius Timarchus</b> Tac. <i>Ann.</i> 15.20-22.1	Unclear  <i>? lex Julia de maiestate</i>	Thrasea Paetus moves for exile but without support from the consuls cannot proceed.	None recorded.
?	64 after the fire	<b>Isidorus</b> Suet. <i>Ner.</i> 39.3	Unclear – imperial edict?	Exiled.  None recorded.



64/5	<b>M. Annaeus Lucanus</b>  Cass. Dio 62.29.4  Tac. <i>Ann.</i> 15.49.3, 70.1  Vacca, <i>Vita</i>  Suet. <i>Vita Luc.</i>  Stat. <i>Silv.</i> 2.7  Mart. 7.21-3.	.	<i>renuntiatio amicitiae</i>  Lucan was banned from writing poetry and possibly from the law courts.  Lucan forced to suicide in the aftermath of the Pisonian conspiracy.	N/A
<b>65</b>	<b>Aftermath of the Pisonian Conspiracy includes a number of literary victims or allegations of insults avenged.</b>			
	<b>L. Annaeus Seneca</b>  Cass. Dio 62.25  Suet. <i>Ner.</i> 35.5  Tac. <i>Ann.</i> 15.60.2-4.4.		<i>renuntiatio amicitiae</i> Forced to suicide.	None recorded.
	<b>Afranius Quintianus</b>  Tac. <i>Ann.</i> 15.49.4		? Forced to suicide.	None recorded.

	<b>Vetinus</b> Tac. <i>Ann.</i> 15.68.2-3 Suet. <i>Ner.</i> 35		Forced to suicide.	None recorded.
	<b>C. Musonius Rufus and Verginus Flavus</b> Tac. <i>Ann.</i> 15.71.4		Relegated from Italy.	None recorded.
	<b>G. Petronius Arbiter</b> Tac. <i>Ann.</i> 16.18-20		<i>renuntiatio amicitiae</i> Held under house arrest and forced to suicide.	None recorded.
66	<b>Curtius Montanus</b> Tac. <i>Ann.</i> 16.28-9, 33.2	<i>lex Julia de maiestate</i>	Acquitted of defamation, provided took no further public office.	Acquitted of defamation.

<b>Vespasian</b>				
75	<b>Diogenes and Heras</b> Cass. Dio 65.15.5	? Imperial edict	Diogenes was flogged and Heras beheaded.	None recorded.
79	<b>C. Helvidius Priscus</b> Tac. <i>Hist.</i> 4.5 <i>Dial.</i> 5.7 Cass. Dio 66.12 Suet. <i>Vespasian</i> 15	? <i>lex Julia de maiestate</i>	Relegated and later executed.	None recorded.
<b>Domitian</b>				
Soon after 81	<b>Hermogenes of Tarsus</b> Suet. <i>Dom.</i> 10	? <i>lex Julia de maiestate</i>	Executed.  Slaves who copied his <i>History</i> were crucified.	None recorded.
91	<b>Mettius Pompusianus</b> Suet. <i>Dom.</i> 10.1 Cass. Dio 67.12.2-4	? <i>lex Julia de maiestate</i>	Relegated to Corsica and later executed.	None recorded.

91	<b>Maternus</b> Cass. Dio 67.12.5	? <i>lex Julia de maiestate</i>	Executed.	None recorded.
93	<b>Q. Junius Arulenus Rusticus</b>  <b>Herennius Senecio</b>  Tac. <i>Agr.</i> 2: 1-2  Suet. <i>Dom.</i> 10.3-4  Cass. Dio 67.13.2  Plin. Ep. 7.19.4-6	<i>lex Julia de maiestate</i>	Books burnt in forum.  Executed.	None recorded.